

Exhibit A

**SUBPOENA/SUBPOENA DUCES TECUM
TO PERSON UNDER FOREIGN SUBPOENA**
Commonwealth of Virginia VA CODE §§ 8.01-412.8—8.01-412.15; Rule 4:9

File No. CLIG-2739-2

Richmond

Circuit Court

100 N. 9th Street Richmond, Va 23219

ADDRESS OF COURT

THE STATE OF ILLINOIS

v./In re: HITACHI, LTD., et al.

TO THE PERSON AUTHORIZED BY LAW TO SERVE THIS PROCESS:

You are commanded to summon

Circuit City Stores, Inc. Liquidating Trust c/o Tavenner & Beran, PLC

NAME

20 North Eighth Street, Second Floor

STREET ADDRESS

Richmond, Virginia 23219

CITY

STATE

ZIP

TO THE PERSON SUMMONED: You are commanded to

- attend and give testimony at a deposition
 produce the books, documents, records, electronically stored information, and tangible things designated and described below

See attached Notice of Discovery and Evidence Depositions and Document Subpoena

at 1320 East Cary Street, Richmond, VA 23219

LOCATION

at June 30, 2016 at 9:00 a.m.

DATE AND TIME

and to permit inspection and copying by the requesting party or someone acting in his or her behalf of the designated items in your possession, custody or control

- permit inspection of the premises

at the following location

LOCATION

ON

DATE AND TIME

This subpoena is issued upon the request of the party named below

Daniel Cummings

NAME OF REQUESTING PARTY

150 South Wacker Drive, Suite 3025

STREET ADDRESS

Chicago, IL 60606 (312) 372-2345

CITY

STATE

ZIP

TELEPHONE NUMBER

12-CH-35266

The requesting party has submitted to this Clerk's Office the foreign subpoena, copy attached, the terms of which are incorporated herein, and the written statement required by Virginia Code § 8.01-412.10.

The names, addresses and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of parties not represented by counsel are provided below on attached list.

6-1416

DATE ISSUED

EDWARD F. JEWETT, Clerk

CLERK

by ✓ Gabrielle Johnson

DEPUTY CLERK

NAME OF ATTORNEY FOR REQUESTING PARTY

BAR NUMBER

LICENSING STATE

OFFICE ADDRESS

TELEPHONE NUMBER OF ATTORNEY

OFFICE ADDRESS

FACSIMILE NUMBER OF ATTORNEY

NAME

BAR NUMBER

LICENSING STATE

STREET ADDRESS

TELEPHONE NUMBER

STREET ADDRESS

FACSIMILE NUMBER

NAME

BAR NUMBER

LICENSING STATE

STREET ADDRESS

TELEPHONE NUMBER

STREET ADDRESS

FACSIMILE NUMBER

NAME

BAR NUMBER

LICENSING STATE

STREET ADDRESS

TELEPHONE NUMBER

STREET ADDRESS

FACSIMILE NUMBER

RETURN OF SERVICE (see page three of this form)

12-CH-35266

This SUBPOENA/SUBPOENA DUCES TECUM TO PERSON UNDER FOREIGN SUBPOENA is being served by a private process server who must provide proof of service in accordance with Va. Code § 8.01-325.

TO the person authorized to serve this process: Upon execution, the return of this process shall be made to the Clerk of Court.

NAME:

ADDRESS:

PERSONAL SERVICE Tel. No.

Being unable to make personal service, a copy was delivered in the following manner:

Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode of party named above after giving information of its purport. List name, age of recipient, and relation of recipient to party named above:

Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above. (Other authorized recipient not found.)

not found , Sheriff

..... by , Deputy Sheriff

DATE

Subpoena in a Civil Matter (For Testimony and/or Documents)

(This form replaces CCG N006 & CCG N014) (Rev. 6/25/09) CCG 0106

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

THE STATE OF ILLINOIS, by its Attorney General, Lisa Madigan

FILED - 1

Plaintiff/Petitioner 2016 JUN 13 PM 2:42
No. 14-CV-552

HITACHI, LTD., et al.

Defendant/Respondent CIRCUIT COURT OF COOK COUNTY OF ILLINOIS
LAW DIVISION

SUBPOENA IN A CIVIL MATTER
(For Testimony and/or Documents)

To: Circuit City Stores, Inc. Liquidating Trust c/o Tavenner & Bran, PLC
20 North Eighth Street, Second Floor
Richmond, Virginia 23219

1. YOU ARE COMMANDED to appear to give your testimony before the Honorable _____
in Room _____, _____, Illinois on _____,
at _____ m.

2. YOU ARE COMMANDED to appear and give your deposition testimony before a Notary Public at: Courtyard Richmond Downtown
in Room 1320 East Cary Street, Richmond, VA 23219, Virginia on June 30, 2016
at 9:00 a.m. m.

3. YOU ARE COMMANDED to mail the following documents in your possession or control to William Bave, White & Case LLP
at 1155 Avenue of the Americas New York, NY 10036, in electronic format to william.bave@whitecase.com, on or before June 30, 2016
at 9:00 a.m. m.
(THIS IS FOR RECORDS ONLY - THERE WILL BE NO ORAL INTERROGATORIES.)
See attached Notice of Discovery and Evidence Depositions and Document Subpoena

Description continued on attached page(s).

YOUR FAILURE TO RESPOND TO THIS SUBPOENA WILL SUBJECT YOU TO PUNISHMENT FOR CONTEMPT OF THIS COURT.

Notice to Deponent:

1. The deponent is a public or private corporation, partnership, association, or governmental agency. The matter(s) on which examination is requested are as follows: See attached Notice of Discovery and Evidence Depositions and Document Subpoena

Description continued on attached page(s).
(A nonparty organization has a duty to designate one or more officers, directors, or managing agents, or other persons to testify on its behalf, and may set forth, for each person designated, the matters on which that person will testify. Ill. Sup. Ct. Rule 206.)

2. The deponent's testimony will be recorded by use of an audio-visual recording device, operated by Victor M. Renteria, Jr., CLVS of Visual Discovery, Inc.
(Name of Recording Device Operator)

3. No discovery deposition of any party or witness shall exceed three hours regardless of the number of parties involved in the case, except by stipulation of the parties or by order upon showing that good cause warrants a lengthier examination. Ill. Sup. Ct. Rule 206(d).

Atty. No. 90707

Pro Se 99500

Name: Daniel Cummings

Atty. for: Toshiba Corporation and Toshiba America Electronic Components, Inc.

Address: 150 South Wacker Drive, Suite 3025

City/State/Zip: Chicago, IL 60606

Telephone: (312) 372-2345

Issued by: Dale C. S.

Signature

Attorney

Clerk of Court

Date: _____

I served this subpoena by mailing a copy, as required by Ill. Sup. Ct. Rules 11, 12 and 204(a)(2), to _____
by certified mail, return receipt requested (Receipt # _____) on _____,

I paid the witness \$ _____ for witness and mileage fees.

I served this subpoena by handing a copy to _____ on _____
I paid the witness \$ _____ for witness and mileage fees.

(Signature of Server)

(Print Name)

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

FIL FD-1
IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION
2016 JUN 13 CHANCERY DIVISION

STATE OF ILLINOIS, *ex rel.* Lisa Madigan,
Attorney General,

Plaintiff,

v.

HITACHI, LTD., *et al.*,

Defendants.

CIRCUIT COURT OF COOK
COUNTY OF ILLINOIS
LAW DIVISION

No. 12-CH-35266

Hon. Rita M. Novak

LIST OF PARTIES AND ATTORNEYS

Plaintiff the State of Illinois, by its Attorney General, Lisa Madigan

Blake Harrop
Chadwick Brooker
Antitrust Bureau
OFFICE OF THE ILLINOIS ATTORNEY GENERAL
100 West Randolph Street
Chicago, Illinois 60601

Defendants Hitachi, Ltd., Hitachi Electronic Devices (USA), Inc., and Hitachi Displays, Ltd.

Kate Wheaton
Karl Stampfl
KIRKLAND & ELLIS
300 North LaSalle Street
Chicago, IL 60654

Defendants Philips Electronics North America Corporation and Koninklijke Philips N.V.

Jeffery Cross
David C. Gustman
Tonita M. Helton
FREEBORN & PETERS LLP
311 S. Wacker Drive, Suite 300
Chicago, IL 60606

John M. Taladay
Erik T. Koons
Charles M. Malaise
BAKER BOTTS LLP
1299 Pennsylvania Avenue, NW
Washington, DC 20004-2400

Defendants Toshiba Corporation and Toshiba America Electronic Components, Inc.

Dan Cummings
Alan Madans
ROTHSCHILD, BARRY & MYERS
150 South Wacker Drive
Suite 3025
Chicago, IL 60606

Christopher M. Curran
Lucius B. Lau
Dana E. Foster
WHITE & CASE
701 Thirteenth Street, N.W.
Washington, DC 20005

William H. Bave, III.
WHITE & CASE
1155 Avenue of the Americas
New York, NY 10036

Defendants Samsung SDI America, Inc. and Samsung Display Device Co., Ltd.

Daniel G. Rosenberg
Catherine B. Diggins
SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP
Three First National Plaza
70 West Madison Street, 48th Floor
Chicago, Illinois 60602

Michael Scarborough
Tyler M. Cunningham
SHEPPARD MULLIN RICHTER & HAMPTON LLP
4 Embarcadero Center, 17th Floor
San Francisco, CA 94111

**Defendants Panasonic Corporation, Panasonic Corporation of North America, and MT
Picture Display Co., Ltd.**

Duane M. Kelley
James F. Herbison
WINSTON & STRAWN LLP
35 West Wacker Drive
Chicago, IL 60601

Jeffrey L. Kessler
Eva W. Cole
Molly M. Donovan
WINSTON & STRAWN LLP
200 Park Avenue
New York, New York 10166-4193

Steven A. Reiss
David L. Yohai
Adam C. Hemlock
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153-0119

Defendants LG Electronics, Inc. and LG Electronics USA, Inc.

Nathan P. Eimer
David M. Simon
EIMER STAHL LLP
224 South Michigan Avenue, Suite 1100
Chicago, IL 60604

Miriam Kim
MUNGER, TOLLES & OLSON LLP
560 Mission Street
27th Floor
San Francisco, California 94105-2907

Jessica Barclay-Strobel
MUNGER, TOLLES & OLSON LLP
355 South Grand Ave.
35th Floor
Los Angeles, California 90071

FII ED-1

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION 2:43

CIRCUIT COURT OF COOK
COUNTY OF ILLINOIS
LAW DIVISION

STATE OF ILLINOIS, *ex rel.* Lisa Madigan,
Attorney General,

Plaintiff,

v.

HITACHI, LTD., *et al.*,

Defendants.

No. 12-CH-35266

Hon. Rita M. Novak

**NOTICE OF RULE 206(a)(1) DISCOVERY AND EVIDENCE DEPOSITIONS AND
DOCUMENT SUBPOENA**

TO: All Counsel of Record

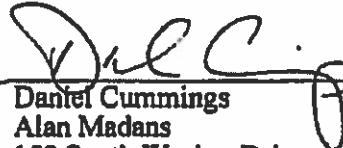
PLEASE TAKE NOTICE that, pursuant to Rule 206(a)(1) of the Illinois Supreme Court Rules, Defendants Toshiba Corporation and Toshiba America Electronic Components, Inc., through counsel and in conjunction with all defendants, will take the discovery deposition, followed by the evidence deposition, of the person or persons designated by Alfred H. Siegel, as Trustee of the Circuit City Stores, Inc. Liquidating Trust ("Circuit City") to testify about the information known or reasonably available to Circuit City on the matters set forth in the attached Exhibit A. Circuit City is directed to produce the documents set forth in Exhibit B attached hereto.

The deposition will commence on June 30, 2016 at 9:00 a.m. at Courtyard Richmond Downtown, 1320 East Cary Street, Richmond, VA 23219. The deposition shall be recorded stenographically and a real-time transcription service such as LiveNote may also be available for the use of counsel. The deposition may also be recorded by sound or sound-and-visual means by

Victor M. Renteria, Jr., CLVS of Visual Discovery, Inc. The deposition will continue pursuant to the Illinois Supreme Court Rules or order of the Court.

Circuit City is advised that Rule 206(a)(1) requires it to produce one or more witnesses at the stated location and time who are knowledgeable and prepared to testify about each of the matters identified in the List of Matters on Which Examination is Requested attached hereto as Exhibit A. The designated witness or witnesses must be prepared to testify about matters known by or reasonably available to Circuit City, not just information personally known by the witness.

Dated: June 13, 2016

By: 

Daniel Cummings
Alan Madans
150 South Wacker Drive
Suite 3025
Chicago, IL 60606
Telephone: (312) 372-2345
Fax: 312-372-2350
E-mail: cummings@rbmchicago.com
madans@rbmchicago.com

Christopher M. Curran
George L. Paul
Lucius B. Lau
Dana E. Foster
White & Case
701 Thirteenth Street, N.W.
Washington, DC 20005
Telephone: (202) 626-3600
Email: ccurran@whitecase.com
gpaul@whitecase.com
alau@whitecase.com
defoster@whitecase.com

Counsel for Toshiba Corporation and Toshiba America Electronic Components, Inc.

EXHIBIT A

DEFINITIONS

For the purposes of this Notice of Deposition, the following definitions apply:

1. "Any" shall be construed to mean "any and all."
2. "CRT" or "CRTs" means any (a) color picture tubes ("CPTs"), which are cathode ray tubes used primarily in color televisions, and (b) color display tubes ("CDTs"), which are used primarily in computer monitors.
3. "CRT Finished Product" or "CRT Finished Products" means televisions containing CPTs or computer monitors containing CDTs.
4. "Defendant" or "Defendants" means any of the entities currently or formerly named as defendants in this litigation and, without limitation, all of their past and present parents, subsidiaries, affiliates, joint ventures, officers, directors, employees, agents, attorneys, or representatives (and the parents', subsidiaries', affiliates', or joint ventures' past and present officers, directors, employees, agents, attorneys, or representatives), and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing.
5. "Document(s)" has the broadest possible meaning permissible under Illinois Supreme Court Rule 214, including, but not limited to, any written, printed, typed, recorded, filmed, punched, transcribed, taped or other graphic matter of any kind or nature, however produced or reproduced, whether in hard copy, electronic, or other form, and includes, without limitation, pamphlets, brochures, books, booklets, information sheets, papers, articles, journals, magazines, computer printouts, Internet search results, tapes, discs or other forms of audio, visual or audio/visual recordings, records, memoranda, reports, financial statements, affidavits, handwritten and other notes, transcripts, paper, indices, letters, envelopes, telegrams, cables, electronic mail messages,

telex messages, telecopied messages, telephone messages, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, summaries or records of meetings or conferences, minutes or transcriptions or notations of meetings or telephone conversations or other communications of any type, tabulations, studies, analyses, evaluations, projections, work papers, statements, summaries, opinions, journals, desk calendars, product labels, prescriptions, package inserts or other information accompanying medications, maintenance or service records, appointment books, diaries, billing records, checks, bank account statements, invoices, photographs, microfilms, tapes or other records, punch cards, magnetic tapes, discs, data cells, drums, printouts, other data compilations (in any form) from which information can be obtained, recordings made through data processing techniques and the written information necessary to understand and use such materials, and any other Documents discoverable under the Illinois Supreme Court Rule 214.

6. "Person" means and includes all natural persons or entities, governmental units, partnerships, firms, corporations, associations, joint ventures, any other form of business organization or arrangement, or any form of public, private or legal entity.

7. "Relating to," "referring to," "regarding," or "with respect to" mean, without limitation, the following concepts: discussing, describing, reflecting, dealing with, pertaining to, analyzing, evaluating, estimating, constituting, studying, surveying, projecting, assessing, recording, summarizing, criticizing, reporting, commenting, or otherwise involving, in whole or in part.

8. "Relevant Period" means March 1, 1995, to November 25, 2007.

9. "You," "Your," and "Circuit City" mean Circuit City Stores, Inc. and any other d/b/a's affiliated with Circuit City Stores, Inc., together with all present and former directors,

officers, employees, or agents of the entities listed in this Definition.

LIST OF MATTERS UPON WHICH EXAMINATION IS REQUESTED

1. Your overall corporate structure, including the identification of departments within Circuit City responsible for the purchase, sale, pricing, marketing, or distribution of CRT Finished Products and their functions and the identification of any individuals that had managerial responsibility for the purchase, sale, pricing, marketing, or distribution of CRT Finished Products.
2. The identity and general description of the CRT Finished Products You purchased, sold, marketed, or distributed.
3. The identity of the Defendants from whom you purchased CRT Finished Products, and the identity and amount of CRT Finished Products You purchased from them (by year, in units, and U.S. dollars), if any.
4. The identity of any non-Defendant manufacturers, producers, or distributors from whom You purchased CRT Finished Products, and the identity and amount of CRT Finished Products (by year, in units, and U.S. dollars) that You purchased from them, if any.
5. Circuit City's purchase or acquisition of CRT Finished Products.
6. The factors Circuit City considered in determining (a) from which Defendant(s) or non-Defendant(s) to purchase CRT Finished Products, and (b) which CRT Finished Products to purchase from particular Defendants and non-Defendants, including but not limited to the vendor qualification process and new model reviews.
7. The process by which You negotiated, entered into, approved, or ratified purchase agreements or contracts for CRT Finished Products, including: (a) Your policies and practices regarding the negotiation of terms and conditions of such sales contracts; (b) use of standardized

sales or purchase contracts; (c) use of "MFN" (Most Favored Nation) or "MFC" (Most Favored Company) clauses or similar price-protection clauses; (d) the use of dealer agreements; and (e) the identity and location of documents that relate to the matters specified in this topic.

8. Circuit City's sales of CRT Finished Products, including:

- (a) the overall sales volume (by units and dollar value);
- (b) the sales volume in Illinois (by units and dollar value);
- (c) the price quoted and received for each sale (including any discounts, rebates, and other terms of sale);
- (d) the date and quantity of each sale; and
- (e) the person(s) to whom such CRT Finished Products were sold.

9. Your policies and practices for setting the price at which You sold CRT Finished Products to Your customers.

10. Your participation in any discounts, promotions, rebates, or advertising cooperative programs provided or sponsored by any Defendant or non-Defendant from whom You purchased CRT Finished Products.

11. Your use of discounts, promotions, rebates or loyalty programs in connection with the sale of CRT Finished Products to Your customers, including how You recorded such discounts or rebates, and the identity and location of documents or data recording such discounts or rebates.

12. How Circuit City's CRT Finished Products were marketed for sale, including whether factors other than price were evident in the marketing materials and how the marketing strategy was determined and implemented for the CRT Finished Products sold.

13. Other products that You believed were viewed by Your customers as alternatives to CRT Finished Products, including: (a) products other than CRT Finished Products; (b) the reasons that You believe Your customers viewed such products to be alternatives to the CRT Finished Products You purchased from the Defendants; (c) the extent to which these products had any effect on Your pricing decisions; and (d) the identity and location of documents that relate to the matters specified in this topic.

14. All contracts or any other agreements relating to CRT Finished Products between Circuit City and any entity, including the terms and conditions of any such contracts or agreements, including the scope of the agreement, choice of law, and forum selection.

15. Explanation of whether, based on records maintained by Circuit City, it is possible to link, trace, or otherwise establish a relationship between the CRT Finished Products that Circuit City purchased to those that it sold and, if so, how.

16. Your practices, policies, and procedures concerning Your market monitoring activity for CRT Finished Products, including the following: (a) Your competitive intelligence activities; (b) Your use of third-party data sources and market share/data analyses; and (c) Your knowledge, use, and tracking of Your competitors' pricing for CRT Finished Products.

17. The extent to which Circuit City passed on its costs in purchasing or acquiring CRT Finished Products to its customers, including pricing practices and timing of price increases, but not including precise figures or total amounts of price margins.

18. The aggregate amount that You received to settle Your claims in the CRT MDL, including any claims relating to alleged overcharges for CRTs contained in CRT Finished Products You sold or distributed to Persons in Illinois.

EXHIBIT B

DEFINITIONS

The applicable Definitions appear in Exhibit A.

INSTRUCTIONS

1. In responding to this subpoena, You are requested to produce all Documents in Your possession, custody, or control, wherever located.
2. All Documents should be produced as maintained in the ordinary course of business.
3. If any part of a Document is responsive to any Request herein, produce the entire Document, including any attachments or exhibits.
4. In the event that more than one copy of a Document exists, produce each copy on which there appears any notation or marking of any sort not appearing on any other copy (including routing or filing instructions) or any copy containing different attachments from any other copy.
5. If You withhold any Documents on a claim of privilege, You must provide a statement of the claim of privilege and all facts relied upon in support of that claim.
6. All electronically stored information shall be produced. Documents originating in paper or other hard copy format should be produced in 300 DPI Group IV Monochrome Tagged Image File Format (.TIFF or .TIF) files. TIFF files shall be produced in single-page format along with image load files (.DII file and .OPT file and .LPF file). All Documents are to be provided with multi-page searchable text (.TXT) files. These text files and image load files should indicate page breaks to the extent possible, as well as Production Number Begin, Production Number End, Production Attachment Range Number Begin, Production Attachment Range Number End, and Production Document Page Count. As well, each .TIFF image should be branded with the applicable Bates number and confidentiality designation (pursuant to the Protective Order, a copy of which is attached).

REQUEST FOR PRODUCTION OF DOCUMENTS

1. All Documents produced by You in *In re: Cathode Ray Tube (CRT) Antitrust Litigation*, Case No. 07-5944 JST, MDL 1917 (N.D. Cal.).

Subpoena in a Civil Matter (For Testimony and/or Documents)

(This form replaces CCG N006 & CCG N014) (Rev. 6/25/09) CCG 0106

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

THE STATE OF ILLINOIS, by its Attorney General, Lisa Madigan

v. Plaintiff/Petitioner }
HITACHI, LTD., et al. No. 12-CH-35266
Defendant/Respondent }

SUBPOENA IN A CIVIL MATTER
(For Testimony and/or Documents)

To: Circuit City Stores, Inc. Liquidating Trust c/o Tavener & Beran, PLC
20 North Eighth Street, Second Floor
Richmond, Virginia 23219

1. YOU ARE COMMANDED to appear to give your testimony before the Honorable _____
In Room _____, _____, Illinois on _____,
at _____ m.
2. YOU ARE COMMANDED to appear and give your deposition testimony before a Notary Public at: Courtyard Richmond Downtown
In Room _____, 1320 East Cary Street, Richmond, VA 23219, _____, Illinois on June 30, 2016
at 9:00 a.m. _____ m.
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at 1155 Avenue of the Americas New York, NY 10036, in electronic format to william.bave@whitecase.com, on or before June 30, 2016
at 9:00 a.m. _____ m.

(THIS IS FOR RECORDS ONLY. THERE WILL BE NO ORAL INTERROGATORIES.)
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Description continued on attached page(s).
YOUR FAILURE TO RESPOND TO THIS SUBPOENA WILL SUBJECT YOU TO PUNISHMENT FOR CONTEMPT OF THIS COURT.

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1. The deponent is a public or private corporation, partnership, association, or governmental agency. The matter(s) on which examination is requested are as follows: See attached Notice of Discovery and Evidence Depositions and Document Subpoena

Description continued on attached page(s).
(A nonparty organization has a duty to designate one or more officers, directors, or managing agents, or other persons to testify on its behalf, and may set forth, for each person designated, the matters on which that person will testify. Ill. Sup. Ct. Rule 206.)

2. The deponent's testimony will be recorded by use of an audio-visual recording device, operated by Victor M. Renteris, Jr., CLV3 of Visual Discovery, Inc.
(Name of Recording Device Operator)
3. No discovery deposition of any party or witness shall exceed three hours regardless of the number of parties involved in the case, except by stipulation of the parties or by order upon showing that good cause warrants a lengthier examination. Ill. Sup. Ct. Rule 206(d).

Atty. No. 90707

Pro Se 99500

Name: Daniel Cummings

Issued by: Dul C. J.

Signature

Atty. for: Toshiba Corporation and Toshiba America Electronic Components, Inc.

Attorney

Address: 150 South Wacker Drive, Suite 3025

Clerk of Court

City/State/Zip: Chicago, IL 60606

Date: _____

Telephone: (312) 372-2345

I served this subpoena by mailing a copy, as required by Ill. Sup. Ct. Rules 11, 12 and 204(a)(2), to _____
by certified mail, return receipt requested (Receipt # _____) on _____,

I paid the witness \$ _____ for witness and mileage fees.

I served this subpoena by handing a copy to _____ on _____
I paid the witness \$ _____ for witness and mileage fees.

(Signature of Server)

(Print Name)

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Exhibit B

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

THE STATE OF ILLINOIS, by its)
Attorney General, Lisa Madigan,)
Plaintiff,)
v.) Case No. 10-CH-34472
AU OPTRONICS CORPORATION;)
AU OPTRONICS CORP. AMERICA,)
INC.; CHI MEI INNOLUX CORP.;)
CHI MEI OPTOELECTRONICS)
CORP. USA, INC.; CMO JAPAN)
COMPANY, LTD.; EPSON IMAGING)
DEVICES CORP.; EPSON)
ELECTRONICS AMERICA, INC.;)
HITACHI, LTD.; HITACHI DISPLAYS)
LTD.; HITACHI AMERICA, LTD.;)
HITACHI ELECTRONIC DEVICES)
USA, INC.; LG DISPLAY CO., LTD.;)
LG DISPLAY AMERICA, INC.;)
SAMSUNG ELECTRONICS CO., LTD.;)
SAMSUNG SEMICONDUCTOR, INC.;)
SAMSUNG ELECTRONICS AMERICA)
INC.; SHARP CORP.; SHARP)
ELECTRONICS CORP.; TOSHIBA)
CORP.; TOSHIBA AMERICA)
ELECTRONIC COMPONENTS, INC.;)
TOSHIBA MOBILE DISPLAY CO.;)
and TOSHIBA AMERICA)
INFORMATION SYSTEMS, INC.,)
Defendants.)

MEMORANDUM OPINION AND ORDER

This matter comes before the Court on Defendants' Renewed Motion to Permit the Use
of MDL Fact Witness Depositions as Evidence Depositions.¹ The Court has reviewed the

¹ The Court notes that the AU Optronics Defendants (AU Optronics Corp. and AU Optronics Corp. America) have withdrawn their participation from the instant motion pursuant to stipulation between the State and the AU Optronics Defendants; all other Defendants remain party to the instant motion.

foregoing motion and Defendants' memorandum in support thereof ("MTP"), as well as the State of Illinois' Response ("Resp."), the Defendants' Reply ("Reply"), and all the parties' respective exhibits thereto. The Court has also considered the oral arguments of counsels and relevant legal authorities.

Background

The underlying allegations of this long-pending case have been discussed at length in previous Orders and thus need not be recited again in great detail.² In late 2006, the public learned of a price-fixing investigation being conducted by the United States Department of Justice. The investigation centered on allegations that manufacturers of thin-film transistor liquid crystal display ("LCD") panels had held unlawful meetings for the purpose of fixing the prices and output of LCD panels throughout the United States, including in Illinois. The price fixing allegedly occurred between November 30, 1998, and December 11, 2006, during which time the State of Illinois and Illinois consumers purportedly paid artificially inflated prices for LCD panels.

After the investigation became public, a torrent of litigation ensued, with hundreds of civil actions filed in United States district courts throughout the country. To promote the efficient adjudication of those cases, the federal matters were consolidated in the United States District Court for the Northern District of California under the caption *In re: TFT-LCD (Flat Panel) Antitrust Litigation*, Case No. 3:07-MD-1827 SI, MDL No. 1827 (N.D. Cal.) (the "multidistrict litigation"). The Honorable Judge Susan Illston has presided over the multidistrict litigation since 2006, and ultimately certified two class actions therein. The first class consisted of entities that were direct purchasers of LCD panels (e.g., entities that utilize LCD panels as components of other products). The second class consisted of indirect purchasers of LCD

² See, e.g., this Court's previously-entered May 30, 2012, and November 26, 2013, Orders.

panels, specifically individuals and entities that purchased products containing LCD panels (e.g., cellular phones, computer monitors, televisions, and numerous other items). Additionally, various plaintiffs opted out of the two classes and brought cases of their own in front of Judge Illston.

Though many states elected to participate in the multidistrict litigation, the State of Illinois opted to pursue its own action. On August 10, 2010, the Illinois Attorney General (the “Attorney General” or the “State”) filed the instant suit on behalf of Illinois indirect purchasers of products containing LCD panels.³ The Complaint alleges that Defendants violated section 3(1) of the Illinois Antitrust Act (the “IAA”) by conspiring to fix prices on LCD panels. The Complaint asserts claims for monetary relief (including treble damages) for damages suffered by the State of Illinois, its state agencies, and, in the State’s *parens patriae* capacity, Illinois residents (both individuals and businesses) who purchased products containing LCD panels during the period of alleged price-fixing. Additionally, the Complaint seeks injunctive relief to undo the effects of Defendants’ alleged unlawful conduct.

At issue in the instant motion is whether the Illinois Supreme Court Rules and the Illinois Rules of Evidence permit Defendants to present certain depositions of fact witnesses, taken primarily in connection with the multidistrict litigation, to be used as evidence depositions at trial in the case before this Court. This issue has been pending before the Court for over a year, having initially been raised in fall of 2014 in a motion by Defendants. MTP Ex. A. At a hearing on November 17, 2014, the Court instructed Defendants to specify precisely which depositions Defendants desired to use so that the State could raise any valid objections rather than addressing the depositions generally. Resp. Ex. 1. The matter was continued, and another hearing was held

³ Indirect purchasers include entities that sell products containing LCD panels and the consumers that ultimately buy the products.

on February 25, 2015. MTP Ex. F. Again, the Defendants were instructed to present specific deposition testimony for the State to either agree or raise objections to. MTP Ex. F; MTP at 4; Resp. at 3. The parties proceeded to engage in lengthy exchanges of documents, and discussions thereon, in an attempt to resolve the dispute. According to Defendants, the end result of such negotiations was that the State rejected all of their proposed deposition testimony. MTP at 5-6. The State insists it did agree that "the Defendants could use some of the designated testimony at trial" but still maintains that it such testimony would constitute hearsay. Resp. at 5. Defendants continue to assert that they are "not aware of any designated testimony for which the State has not asserted any objections." Reply at 12.

The parties being at an apparent impasse, Defendants filed the instant Renewed Motion, which has been fully briefed by both sides, and which this Court must now attempt to resolve. In their Renewed Motion, the Defendants request this Court make the following findings:

- (1) That Defendants are permitted to use all of the portions of depositions designated in Defendants' Exhibit H at trial pursuant to Illinois Supreme Court Rule 202 and Rule 212;
 - (2) That "the fact that the State's counsel did not attend" the depositions presented in Exhibit H "will not prevent Defendants from offering the designated testimony in evidence" at trial pursuant to Illinois Rule of Evidence 804(b)(1); and
 - (3) That the parties must "work cooperatively to reach agreement" with regard to other testimony from the multidistrict litigation being offered at trial. MTP at 3.
- Defendants assert that these depositions taken in connection with the multidistrict litigation involved witnesses from many states and other countries, and that they were taken at great expense, pursuant to the Federal Rules of Civil Procedure and Federal Rules of Evidence which do not distinguish between fact witness depositions and evidence depositions as do their

Illinois counterparts. MTP at 1-3. Indeed, proceedings in this case were stayed pending discovery proceedings in the multidistrict litigation. MPT at 2. When proceedings in this case resumed, Defendants provided the State with copies of all depositions conducted in the multidistrict litigation, many of which Defendants believe the State intends to rely upon in the instant suit under certain hearsay exceptions, such as statements against interest. MTP at 2. Defendants also believe the State will utilize such depositions as the basis for expert testimony, thereby avoiding entry of the depositions themselves into the record. MTP at 20.

Defendants argue it would be prejudicial to the interests of justice to allow the State to selectively use the parts of the depositions that might be beneficial to its position without allowing Defendants the opportunity to use parts of the depositions as may be beneficial to their position. MPT 1-3. Recreating the same depositions as evidence depositions under the Illinois Rules will require inordinate time and expense, Defendants say, because the witnesses, many of whom are third-parties, reside mostly outside Illinois and in some cases outside the United States. MPT at 1.

The State insists that under Illinois Supreme Court Rule 202 a party must specify in the notice or subpoena for a deposition whether it is for discovery or evidence, and that where neither is specified the depositions are automatically considered discovery depositions only. Resp. at 6. The State argues that depositions taken pursuant to the federal rules are not acceptable as evidence depositions in Illinois and that no exception should be made here where the State had no notice of depositions in the multidistrict litigation. Resp. at 7-9. The State acknowledges that it is still possible to use the depositions at trial, but only for the limited purposes allowed under Illinois Rule of Evidence 804 in conjunction with Illinois Supreme Court Rule 212. Resp. at 10. The state argues that, within the confines of the exceptions allowed, it makes no difference

whether there was a predecessor-in-interest of the State present at any of the depositions because they can only be considered discovery depositions. Resp. at 10-11. Even if the Court were to consider them evidence depositions for purposes of Illinois law, the State further argues that no counsel representing consumers was present at some of the depositions at issue. Resp. at 10-11.

Discussion

The Illinois Supreme Court Rules and the Illinois Rules of Evidence govern how depositions must be conducted and for what purposes they may be used. Illinois Supreme Court Rule 212 ("Rule 212") provides in pertinent part as follows:

(a) **Purposes for Which Discovery Depositions May Be Used.**

Discovery depositions taken under the provisions of this rule may be used only:

- (1) for the purpose of impeaching the testimony of the deponent as a witness in the same manner and to the same extent as any inconsistent statement made by a witness;
- (2) as an admission made by a party or by an officer or agent of a party in the same manner and to the same extent as any other admission made by that person;
- (3) if otherwise admissible as an exception to the hearsay rule;
- (4) for any purpose for which an affidavit may be used; or
- (5) upon reasonable notice to all parties, *as evidence at trial or hearing against a party who appeared at the deposition or was given proper notice thereof*, if the court finds that the deponent is not a controlled expert witness, the deponent's evidence deposition has not been taken, *and the deponent is unable to attend or testify because of death or infirmity*, and if the court, based on its sound discretion, further finds such evidence at trial or hearing will do substantial justice between or among the parties.

(b) **Use of Evidence Depositions.**

All or any part of [non-physician and non-surgeon] evidence depositions may be used for any purpose for which a discovery deposition may be used, and may be used by any party for any purpose if the court finds that at the time of the trial:

- (1) The deponent is dead or unable to attend or testify because of age, sickness, infirmity, or imprisonment;
- (2) *The deponent is out of the county*, unless it appears that the absence was procured by the party offering the deposition, provided, that a party who is not a resident of this State may introduce his own deposition if he is absent from the county; or

(3) *The party offering the deposition has exercised reasonable diligence but has been unable to procure the attendance of the deponent by subpoena; or finds, upon notice and motion in advance of trial, that exceptional circumstances exist which make it desirable, in the interest of justice and with due regard for the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.*

(c) Partial Use. If only a part of a deposition is read or used at the trial by a party, any other party may at that time read or use or require him to read any other part of the deposition which ought in fairness to be considered in connection with the part read or used.

Ill. S. Ct. Rule 212 (emphasis added). In addition, Illinois Supreme Court Rule 202 ("Rule 202") provides in pertinent part that "the notice, order, or stipulation to take a deposition shall specify whether the deposition is to be a discovery deposition or an evidence deposition," and that "in the absence of specification a deposition is a discovery deposition only." Ill. S. Ct. Rule 202.

The admissibility of evidence is a decision left to the sound discretion of the trial court.

Leonardi v. Loyola University of Chicago, 168 Ill.2d 83, 92 (1995). One type of evidence that is allowed under only very limited circumstances is hearsay, which is defined as an out-of-court statement offered for the truth of the matter asserted. *Id.* at 99. The Illinois Rules of Evidence 804 ("Rule of Evidence 804") enumerates a number of exceptional circumstances in which hearsay, including both discovery and evidence depositions, are admissible in Illinois State Court when the declarant is unavailable as a witness. Ill. R. Evid. 804. Under Rule of Evidence 804, an evidence deposition may be used when declarant is unavailable if it is "taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or . . . a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination." *Id.* A discovery deposition, on the other hand, is only admissible when declarant is unavailable if it was taken pursuant to subpart (a)(5) of Rule 212. *Id.* Even if a declarant is deceased, a discovery deposition which does not meet all

requirements of subpart (a)(5), or fall into one of the other hearsay exceptions in Rule 212, is not admissible. *Longstreet v. Cottrell, Inc.*, 374 Ill. App. 3d 549, 554 (5th Dist. 2007) (deceased declarant's discovery deposition not admissible under Rule 212(a)(5) where declarant was also a party).

Defendants argue that federal law, which these depositions were taken in accordance with, makes no distinction between a discovery deposition and an evidence deposition, and that in fact Illinois is the only state to do so. MTP at 7. Depositions taken pursuant to federal rules, Defendants say, are all taken with the expectation that the testimony can be used at trial. MTP at 7. Furthermore, depositions taken pursuant to federal rules "meet all the pertinent criteria for evidence depositions under Illinois law." MTP at 7. Defendants cite several cases they believe support their position, including *McClure v. Owens Corning Fiberglas Corporation*, 298 Ill. App. 3d 591, 4th Dist. 1998), *In re Estate of Ragen*, 96 Ill. App. 3d 1035 (1st Dist. 1981), *Flack v. McClure*, 206 Ill. App. 3d 976 (1st Dist. 1990), and *Berry v. American Standard, Inc.*, 382 Ill. App. 3d 895 (5th Dist. 2008).

None of the cases cited by Defendants actually supports their position; instead, case law cited by Defendants fails to reach the question of whether a deposition taken pursuant to federal rules could be deemed an evidence deposition under Illinois rules. In *McClure*, the Fourth District speculated that a deposition taken pursuant to federal rules should have been admitted in an asbestos exposure case, but found no reversible error where the information in question had largely been admitted by "other means." *Id.* at 603. That court made no finding as to any equivalency between federal rules and Illinois rules pertaining to depositions, instead noting that neither party had raised the issue. *Id.* at 602. In *Ragen*, the First District determined that a deposition labeled as a "discovery deposition" could be used as evidence where a trial judge

informed the parties ahead of time that the deposition could be considered as evidence at trial, the attorney stated at the beginning of the deposition that it was intended to be evidentiary, counsel for both parties was present at the deposition, and the content did not prejudice either party. *In re Estate of Ragen*, 96 Ill. App. 3d at 1046. In *Flack*, a trial court did not err in admitting a deposition where “proper notice was given and . . . the dual [discovery and evidentiary] purpose of the deposition was stated on the record, giving opposing counsel the opportunity to object.” *Flack*, 206 Ill. App. 3d at 981. Finally, *Berry* does not support Defendants’ argument because the Fifth District determined in that case that the trial court had properly disallowed the deposition, noting that “strict compliance with supreme court rules is generally required,” and Rule 212 gives a trial court discretion to allow evidentiary use of discovery deposition *only* for a non-party in the limited circumstances prescribed by subpart (a)(5). *Berry*, 382 Ill. App. 3d at 902 (citing Ill. S. Ct. Rule 212).

Since case law cited by Defendants is not on point, the Court turns to the plain language of Rule 202, Rule 212, and Rule of Evidence 804. Defendants argue that, under those rules, the key issue with respect to whether a deposition is considered a discovery or evidence deposition under Illinois law is how the deposition was noticed; because the depositions in question were noticed pursuant to the federal rules – which Defendants say would allow for use at trial – Defendants believe this notice was adequate for the depositions to be considered evidentiary depositions under Illinois law. MTP at 8-9.

Defendants’ argument glosses over another key fact, however: the depositions in question were taken in connection with an entirely different proceeding to which the State of Illinois was not a party. Even if the Court assumes, *arguendo*, that a deposition taken pursuant to federal rules puts all the parties on sufficient notice that such deposition may be used as evidence at trial

– thereby satisfying the Illinois rules regarding an evidence deposition – Defendants would then need to show, with respect to each deposition they seek to introduce, that the following requirements are met:

- (1) The witness is “unavailable” pursuant to Rule of Evidence 804(a);
- (2) The State (“the party against whom the testimony is now offered”), or “a predecessor in interest” of the State, had *both* an opportunity *and* “similar motive” to examine the witness at the deposition in question.

With respect to the first prong, it is not proper for the Court to make a determination on availability until the time of the trial. *People v. Ward*, 207 Ill. App. 3d 365, 370 (3d Dist. 1991) (“The availability of a witness is an ongoing question for the trial court at the time the evidence is presented to it”) (citing (*People v. Ford*, 139 Ill. App. 3d 894 (5th Dist. 1985))). Defendants have acknowledged this, and ask the Court to put aside determinations of availability accordingly, but to nevertheless answer whether, *if a witness is determined by the Court to be unavailable*, they are otherwise permitted to submit the depositions presented in Exhibit H at trial. MTP at 10.

On this question, Defendants first argue that the State had both adequate notice and opportunity to participate in depositions conducted in the multidistrict litigation based on the fact that counsel for the State filed appearances “very early on” in the multidistrict litigation, and as a result received electronic case filings from that case, including the deposition protocol and Special Master’s Order regarding individual action plaintiffs and case management. MTP at 11-12. The Special Master’s Order indicated that deposition notices should be provided only to the liaison counsel for each group of plaintiffs. MTP at 12; MTP Ex. S. Because of this, say Defendants, the State was sufficiently aware that depositions were proceeding in the multidistrict

litigation and the State knew who to contact in the event they wanted to attend, thus satisfying the notice requirement. MTP at 12-13.

The State disputes Defendants' assertion that it had adequate notice of the depositions to satisfy Illinois rules. First of all, the State points out that notices of the depositions were not filed, so the fact that the State had entered an appearance in the multidistrict litigation did not result in their automatically receiving notice of depositions. Resp. at 9. The State acknowledges that it had access to the deposition protocol in the multidistrict litigation, but points out that this document lists no specific depositions, dates, or locations. Resp. at 9; MTP Ex. Q. The State further argues that the protective order in the multidistrict litigation prevented anyone who was not a party from accessing "confidential information" and that "virtually all of the deposition testimony and exhibits were designated confidential." Resp. at 9-10. Therefore, the State argues it could not have fully participated in the depositions even if it had notice. Resp. at 10.

The Defendants nevertheless maintain that the State had "de facto" notice, and further reply that notice to the State was not even necessary because "an evidence deposition need not be noticed as one intended to be used in a separate proceeding" and that "Rule 202 does not require that nonparties receive notice of an evidence deposition." Reply at 4. Rule of Evidence 804(b)(1) with its reference to a predecessor-in-interest would be rendered meaningless, Defendants argue, if the type of deposition contemplated therein were not allowed to be used in a separate proceeding by someone who was not party to the action in which the deposition was originally taken. Reply at 5.

Even assuming *arguendo* that Defendants are correct as to the legal aspect of this issue – that *if the State had notice* that a deposition was being taken for the purpose of introducing as evidence at trial in another suit, then such deposition should thereafter be considered an evidence

deposition as between Defendants and the State in the instant suit – there is *nothing* that indicates the State had such notice with respect to the depositions at issue here. Defendants are inviting this Court to craft a definition of what constitutes notice that is inclusive of merely (1) having knowledge that some depositions are likely being conducted in a given case, and (2) having knowledge of who may be contacted for additional information, should any be available. The Court need not even entertain this invitation because Illinois Supreme Court Rule 206 ("Rule 206") provides clear instructions as to what constitutes notice of a deposition. Ill. S. Ct. Rule 206.

Rule 206 states in pertinent part that "a party desiring to take the deposition of any person upon oral examination shall serve notice in writing a reasonable time in advance on the other parties. *The notice shall state the time and place for taking the deposition; the name and address of each person to be examined, if known, or, if unknown, information sufficient to identify the deponent; and whether the deposition is for purposes of discovery or for use in evidence.*" Ill. S. Ct. Rule 206 (emphasis added). Nothing in the record or any of the parties' allegations indicates that the State was provided with notice in advance of the time and place of any depositions, or the name and address or other information sufficient to identify any witnesses. It is true that federal rules, not Illinois rules, governed depositions taken in the multidistrict litigation; nevertheless, Illinois rules govern the instant suit and what is required of the parties thereto. Therefore, even if the Court were to accept Defendants' legal argument that notice of a deposition being conducted in the multidistrict litigation pursuant to federal rules sufficiently indicated that the deposition might be used as evidence in Illinois, the Court finds no indication that such notice was ever provided to the State for any of the depositions at issue here.

Defendants next argue that, even if the State itself did not have an opportunity to cross-examine witnesses at the depositions, the depositions might still be used at trial under Rule of Evidence 804 because a "predecessor in interest" of the State had opportunity and "similar motive" to cross-examine the witnesses. MTP at 11. Defendants argue that the State's interests were adequately represented at the depositions by counsels for plaintiffs in the multidistrict litigation, including attorney generals from other states. MTP at 15-16.

The State argues that counsels for many of the plaintiffs in the multidistrict litigation were not predecessors in interest for the State because "the State has an interest in showing that the price-fixing overcharge was passed on from intermediaries to Illinois consumers." Resp. at 11-12. Furthermore, the State identifies at least one specific question – regarding the purported causal link between intermediary price increases and the alleged price-fixing of LCDs – the State would have asked, if given the opportunity, that none of the parties present at depositions with intermediary plaintiffs actually asked. Resp. at 12. Defendants reply that the State based its examples upon depositions that are not part of those contemplated by Defendants in Exhibit H, and that the State's proposed question has already been answered sufficiently in one of the depositions at issue. Neither party cites Illinois case law in support of their arguments as to what constitutes a "predecessor at interest" or a "similar motive" for purposes of Rule of Evidence 804.

This Court finds a relatively recent Illinois case called *Dukes v. Pneumo Abex Corporation* to be of guidance on this particular issue. 386 Ill. App. 3d 425 (4th Dist. 2008) (overruled on other grounds as stated in *Rodarmel v. Pneumo Abex, L.L.C.*, 2011 IL App (4th) 100463, ¶ 118). The Fourth District determined in *Dukes* that certain depositions taken in a federal conspiracy case regarding asbestos exposure could be used by a plaintiff in an Illinois

exposure liability case built upon the same underlying allegations. *Dukes*, 386 Ill. App. 3d at 442. A defendant manufacturer of products containing asbestos in *Dukes* called Honeywell appealed a trial court's decision to allow deposition testimony from cases where Honeywell was not a party. *Id.* at 427. The court explained the rule as follows:

Former testimony is not admissible unless it is established the witness is unavailable, the action involved the same issue between the same parties or their privies, and the party against whom the testimony is offered had full opportunity to cross-examine the witness in the prior proceedings. However, the identity-of-the-parties requirement may not be strictly enforced as long as the party against whom the evidence is offered had full opportunity to test the veracity of the former testimony through cross-examination, such as where testimony at a defendant's criminal trial is sought to be introduced at a civil trial against the same defendant.

Where the choice is between having testimony by way of deposition or prior trial testimony and having no testimony, this court has noted the identity-of-the-parties requirement should be relaxed further to allow the introduction of former testimony even if a party against whom the evidence is offered was not a party to the prior proceedings if 'the interests of the party against whom the deposition is sought to be admitted were protected by the presence of a party at the deposition with the opportunity and a similar motive to develop testimony.'

Id. at 441 (internal citations omitted).

The trial court in *Dukes* had reviewed each deposition at the time it was offered into evidence to determine if the interests of the defendant (the party against whom the prior testimony was offered) were protected. *Id.* In making its determination, the trial court had looked at the purpose for which the testimony was offered, and at the interests of the parties present when the deposition was taken. *Id.* at 441-42. The testimony at issue consisted of depositions of former employees of asbestos manufacturers in the federal conspiracy litigation who were either deceased or unavailable because they were not residents of Illinois. *Id.* at 441-43. The testimony was offered "for the purposes of showing parallel conduct by alleged coconspirators," such as whether they failed to inform employees of signs of asbestos-related disease detected by in-

house medical exams, but the testimony was not offered "for the purpose of proving conspiracy."

Id. at 441-42. Defendant Honeywell had not been a party to the federal conspiracy case, but attorneys for a different asbestos manufacturer, who was a defendant in the federal case, were present at the depositions. *Id.* at 442. The appellate court found no abuse of discretion in the trial court's determination that attorneys for the asbestos manufacturer in the federal case would have had a similar motive to disprove the testimony of former employees that information was withheld from them. *Id.*

Applying the analysis of *Dukes* to the instant suit, in order to make any determination as to the admissibility of a deposition taken in prior cases, including the multidistrict litigation, this Court must first examine the purpose for which the testimony is being offered, and the interests of the parties present when the deposition was taken. Although the Court has reviewed the wide range of excerpts from deposition testimony presented by Defendants in Exhibit H, it remains unclear at this time for what purpose Defendants propose to introduce each portion. Indeed, it is unlikely Defendants could even predict with exactitude at this early stage – when no trial has even been set – what their strategic needs may be with respect to every proposed witness. It seems to this Court, however, that the gravamen of the deposition testimony at issue, to the extent that it can even be summarized, concerns how prices for products were set and what occurred at certain meetings where prices were allegedly fixed. MTP Ex. H; MTP Ex. W. These facts go directly to the elements of the price-fixing conspiracy the State seeks to prove, unlike the testimony in *Dukes* that was offered only to show parallel conduct by non-parties. Therefore this Court finds that admission of such deposition testimony would be improper *even if* the other criteria, such as unavailability of the witnesses, were met. With the many witnesses who testified at the multidistrict litigation depositions, and who had knowledge of the underlying facts

regarding meetings and communications between the Defendants, there is less than a minuscule chance that the Court would be left with “no testimony” whatsoever at trial. *See Duke*, 386 Ill. App. 3d at 441 (the identity-of-parties requirement is properly relaxed “where the choice is between having testimony by way of deposition or prior trial testimony and *having no testimony*” (emphasis added)).

Although the findings above are a sufficient basis to deny Defendants’ motion, and further analysis under *Dukes* need not be conducted, the Court will nevertheless fully address all of the parties’ arguments on this matter in the hope of subduing further redundancies in both parties’ motion practice on this issue. With respect to the second part of the *Dukes* analysis, Defendants have somewhat helpfully provided a list of counsels present at the depositions presented in Exhibit H. MTP Ex. W. Some of the parties represented include attorney generals for other states, and some include counsel for a class of Indirect Purchaser Plaintiffs, while others indicate only counsel for private intermediaries. MTP Ex. W. While these parties represent a variety of interests, many of which might overlap in some respects with that of the State, the Court finds that the interests of the parties who were present at all of the depositions at issue are distinguishable from the interests of the State here in *at least* two ways. First, plaintiffs who were intermediaries in the same alleged price-fixing at issue in the multidistrict litigation had no interest in eliciting testimony about overcharges being passed on from intermediaries to end-users. Second, none of the parties – not even attorney generals from other states – had an interest in eliciting testimony about overcharges being passed on to consumers in Illinois specifically. The Court thus fails to see how the interests of the State could have been adequately represented at any of the depositions from prior litigation, even assuming *arguendo* that such testimony meets the other requirements of Rule of Evidence 804.

Finally, Defendants have also argued that it would be inequitable to allow the State to cherry-pick which depositions they will use under hearsay exceptions available to them – such as statements against interest or statements of party opponents, or by allowing their experts to use otherwise inadmissible depositions to form the basis of their opinion testimony – while denying Defendants the opportunity to present those depositions that may be favorable to their case. This circumstance, however, exists in every case tried before any Court; to wit, a party is always permitted to put in testimony which is an admission by a party or a statement against interest. A party who has no such testimony cannot use the opponents' right to counter such testimony with rank hearsay. This case presents no different calculus and should be treated as any other case.

Defendants argue that requiring them to reconvene the depositions pursuant to Illinois law would "cause inordinate expense and delay" where most of the witnesses in question are third-party witnesses residing outside Illinois or even outside the United States. MTP at 18-19. Some witnesses, Defendants say, may not be available at all. MTP at 19. This argument also fails; there is no statute, rule, or case law supporting the premise that these impositions in and of themselves overcome the fundamental rules regarding hearsay that bind this Court. See Illinois Rules of Evidence, Article VIII, *et seq.*. None of the exceptions enumerated in Rules 803 or 804 of the Illinois Rules of Evidence provide that expense and/or delay alone are sufficient reasons to allow hearsay into evidence. Defendants remain free to raise and advocate for introduction of additional material pursuant to the Rule of Completeness,⁴ codified in Rule 212(c), regarding any portion of a deposition that might be introduced by the State at trial. Ill. Sup. Ct. Rule 212. To

⁴ Discovery depositions and a "broad range of evidence" may be introduced pursuant to the Rule of Completeness, as explained by the Fourth District in a recent medical malpractice suit:

Oral conversations, parts of written or recorded statements or in the nature of addenda thereto, and written or recorded statements neither part of the previously introduced written or recorded statement nor in the nature of addenda thereto may be introduced by an opposing party on his or her next examination of the same witness, whether cross or redirect, provided such evidence tends to explain, qualify, or otherwise shed light on the meaning of the evidence already received.

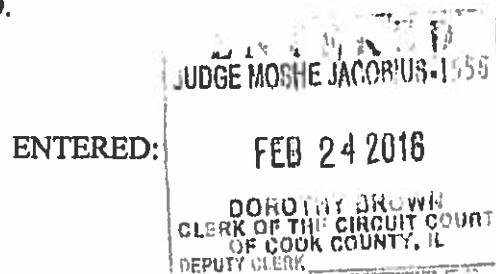
Fakes v. Eloy, 2014 IL App. (4th) 121100, ¶ 88.

the extent that any expert witness for the State relies on depositions as the basis of their conclusions, so may any expert witness for Defendants rely on otherwise inadmissible depositions to form their own conclusions, and each party will have the opportunity to cross the others' experts on the strength of their reasoning. See Ill. Rule of Evidence 703. Other exceptions pursuant to which Defendants believe the State may introduce some of the deposition testimony at issue, such as statements against interest, remain available for both parties to invoke, consistent with the Rules of Evidence, as in every case before this Court. The possibility that one party in a given case may have more evidence than another party which falls into such an exception does not work an injustice. Thus the Court finds that no fundamental unfairness to Defendants will result from this Court's adherence to the requirements of Rule of Evidence 804 with respect to the deposition at issue here.

For the reasons explained *supra*, this Court cannot grant the broad declaration of admissibility sought by Defendants. The full relief requested by Defendants is overly broad to the point that this Court would utterly abdicate its duty to enforce the Illinois Rules of Evidence and Illinois Supreme Court Rules by granting the motion, even putting aside that determinations as to availability of witnesses at trial are premature.

IT IS, THEREFORE, HEREBY ORDERED that:

1. The Defendants' Renewed Motion to Permit the Use of MDL Fact Witness Depositions as Evidence Depositions is DENIED.



February 24, 2016

Judge Moshe Jacobius

No. 1556

Exhibit C

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and LG Electronics U.S.A., Inc.*

Additional Counsel Listed on Signature Pages

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

**In re: CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION**

Case No. 07-5944 (SC)

MDL No. 1917

This Document Relates to:

ALL ACTIONS

**NOTICE OF DEPOSITION OF
PLAINTIFF ALFRED H. SIEGEL, AS
TRUSTEE OF THE CIRCUIT CITY
STORES, INC. LIQUIDATING TRUST
PURSUANT TO RULE 30(B)(6)**

1 PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the Federal Rules of Civil
2 Procedure, Defendants LG Electronics, Inc. and LG Electronics U.S.A., Inc., through counsel and
3 in conjunction with all defendants, will take the deposition upon oral examination under oath of
4 the person or persons designated by Plaintiff Alfred H. Siegel, as Trustee of the Circuit City
5 Stores, Inc. Liquidating Trust ("Plaintiff"), on April 23, 2014 beginning at 9:00a.m. EST, and
6 continuing from day to day thereafter until concluded. The deposition shall be held at the law
7 offices of Tavenner & Beran, PLC, 20 North Eighth Street Second Floor, Richmond, VA 23219
8 before a notary public or other officer authorized to administer oaths. The testimony to be given
will be recorded by stenographic and videographic means.

9 Pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, Plaintiff is required to
10 produce one or more witnesses at the stated location and time who are aware of and prepared to
11 testify about Plaintiff's knowledge of the topics listed in the Schedule of Deposition Topics
12 attached to this Notice as Exhibit A. If the designated representative or representatives do not have
such knowledge, they are required to acquire it through whatever reasonable investigation may be
13 necessary.

14 Dated: March 18, 2014

15 By: /s/ Laura K. Lin

16 Laura K. Lin
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20 *Counsel for Defendants LG Electronics, Inc.
and LG Electronics U.S.A., Inc.*

EXHIBIT A

DEFINITIONS

1 1. "Any" shall be construed to mean "any and all."

2 2. "Circuit City" means Circuit City Stores, Inc.

3 3. "CRT" or "CRTs" means any (a) color picture tubes ("CPTs"), which are cathode ray

4 tubes used primarily in color televisions, and (b) color display tubes ("CDTs"), which are used

5 primarily in computer monitors.

6 4. "CRT Finished Product" or "CRT Finished Products" means televisions containing

7 CPTs or computer monitors containing CDTs.

8 5. "Defendant" or "Defendants" means any of the entities currently or formerly named as

9 defendants in this litigation and, without limitation, all of their past and present parents, subsidiaries,

10 affiliates, joint ventures, officers, directors, employees, agents, attorneys, or representatives (and the

11 parents', subsidiaries', affiliates', or joint ventures' past and present officers, directors, employees,

12 agents, attorneys, or representatives), and the predecessors, successors, heirs, executors,

13 administrators, and assigns of each of the foregoing.

14 6. "Document" or "documents" has the broadest possible meaning pursuant to the

15 Federal Rules of Civil Procedure including all writings and other tangible things upon which any form

16 of communication is recorded or reproduced, and preliminary drafts and non-identical copies of the

17 above (whether such copies differ from the original by reason of notation made on such copies or

18 otherwise). Without limiting the generality of the foregoing, the term "document" or "documents"

19 includes correspondence, memoranda, notes, records, letters, envelopes, telegrams, messages, studies,

20 analyses, contracts, agreements, working papers, accounts, analytical records, reports or summaries of

21 investigations, trade letters, press releases, comparisons, books, calendars, diaries, articles, magazines,

22 newspapers, booklets, brochures, pamphlets, circulars, bulletins, notices, drawings, diagrams,

23 instructions, notes or minutes of meetings or of other communications of any type, including inter-

24 and intra-office communications, questionnaires, surveys, charts, graphs, photographs, phonograph

25 recordings, films, tapes, disks, data cells, print-outs of information stored or maintained by electronic

26 data processing or word processing equipment, including e-mail, and all other data compilations

27 from which information can be obtained (by translation, if necessary, by you through detection

28 devices into usable form), including electromagnetically sensitive storage media such as floppy

29 disks, hard disks and magnetic tapes, and any preliminary versions, drafts or revisions of any of

30 the foregoing.

31 7. "Or" and "and" should be construed so as to require the broadest possible response.

32 If, for example, a request calls for information about "A or B" or "A and B," you should produce

NOTICE OF DEPOSITION OF PLAINTIFF ALFRED H. SIEGEL,
AS TRUSTEE OF THE CIRCUIT CITY STORES, INC.
LIQUIDATING TRUST PURSUANT TO RULE 30(B)(6)

1 all information about A and all the information about B, as well as all information about A and B
2 collectively.

3 8. "Relating to," "referring to," "regarding," or "with respect to" mean, without
4 limitation, the following concepts: discussing, describing, reflecting, dealing with, pertaining to,
5 analyzing, evaluating, estimating, constituting, studying, surveying, projecting, assessing,
6 recording, summarizing, criticizing, reporting, commenting, or otherwise involving, in whole or
in part.

7 9. "Relevant Period" means March 1, 1995, to November 25, 2007 .

8 10. "You," or "Your" mean the responding Plaintiff, Circuit City Stores, Inc. and any
other d/b/a's affiliated with Circuit City Stores, Inc., together with all present and former
9 directors, officers, employees, or agents of the entities listed in this Definition.

10 **SCHEDULE OF DEPOSITION TOPICS**

11 Witnesses with knowledge of the following matters during the Relevant Period:

12 1. Your overall corporate structure, including the identification of departments within
13 Circuit City responsible for the purchase, sale, pricing, marketing, or distribution of CRTs or
14 CRT Finished Products and their functions and the identification of any individuals that had
15 managerial responsibility for the purchase, sale, pricing, marketing, or distribution of CRTs or
16 CRT Finished Products.

17 2. The location of Circuit City's purchasing operations for CRTs or CRT Finished
Products, including the location of price negotiations.

18 3. The identity and general description of the CRTs or CRT Finished Products You
19 purchased, sold, marketed, or distributed.

20 4. The identity of the Defendants from whom you purchased CRTs or CRT Finished
Products, and the identity and amount of CRTs or CRT Finished Products You purchased from them
21 (by year, in units, and U.S. dollars), if any.

22 5. The identity of any non-Defendant manufacturers, producers, or distributors from
23 whom you purchased CRTs or CRT Finished Products, and the identity and amount of CRTs or CRT
24 Finished Products (by year, in units, and U.S. dollars) that You purchased from them, if any.

25 6. Circuit City's purchase or acquisition of CRTs or CRT Finished Products, including:
26 (a) purchase volume (by units and dollar value);

(b) the price quoted and paid for each purchase, including any discounts (e.g., early-pay, volume, or deduction from invoice ("DFI") discounts), rebates (e.g., guaranteed or unguaranteed volume, trailing credit, debit memoranda), and other terms of purchase;

(c) the date and quantity of each purchase;

(d) whether each purchase was for internal use or resale;

(e) whether each purchase was for a new product or a refurbished product;

(f) whether and when Circuit City took physical possession of the purchased

CRTs or CRT Finished Products;

(g) the reasons for purchasing CRTs or CRT Finished Products in one state or country as opposed to another;

(h) the location of the person(s) who negotiated and consummated the purchase on Circuit City's behalf;

(i) the locations from which and to which each purchase was shipped;

(j) the locations from which and to which Circuit City was billed for each transaction;

(k) the name of each entity from which you acquired the CRTs or CRT

Finished Products.

7. The factors Circuit City considered in determining (a) from which Defendant(s) or non-Defendant(s) to purchase CRTs or CRT Finished Products, and (b) which CRTs or CRT Finished Products to purchase from particular Defendants and non-Defendants, including but not limited to the vendor qualification process and new model reviews.

8. The process by which You negotiated, entered into, approved, or ratified purchase agreements or contracts for CRTs or CRT Finished Products, including: (a) Your policies and practices regarding the negotiation of terms and conditions of such sales contracts; (b) use of standardized sales or purchase contracts; (c) use of "MFN" (Most Favored Nation) or "MFC" (Most Favored Company) clauses or similar price-protection clauses; (d) the use of dealer agreements; and (e) the identity and location of documents that relate to the matters specified in this topic.

9. Your participation in any discounts, promotions, rebates, or advertising cooperative programs provided or sponsored by any Defendant or non-Defendant from whom You purchased CRTs or CRT Finished Products.

10. Circuit City's sales of CRTs or CRT Finished Products, whether direct sales or sales by any person or entity purchasing or incorporating such CRTs or CRT Finished Products

1 into other CRT Finished Products on Circuit City's behalf, including Circuit City's incorporation
2 of CRTs in any other product or resale of CRTs or CRT Finished Products, including:

- 3 (a) the sales volume (by units and dollar value);
4 (b) the price quoted and received for each sale (including any discounts, rebates,
5 and other terms of sale);
6 (c) the date and quantity of each sale; and
7 (d) the person(s) to whom such CRTs or CRT Finished Products were sold.

8 11. Your policies and practices for setting the price at which You sold CRT Finished
9 Products to Your customers, including consideration or use of the following:

- 10 (a) formulas;
11 (b) factors such as cost, supply, demand, competitor pricing, market forecasts, and
12 product specifications;
13 (c) price guidelines or price lists;
14 (d) negotiations or negotiated prices;
15 (e) commission costs;
16 (f) average costs;
17 (g) why pay prices;
18 (h) minimum advertised prices;
19 (i) meet-comping;
20 (j) alternative distribution channels;
21 (k) the percentage of price attributable to CRTs contained in CRT Finished
22 Products sold;
23 (l) rebates;
24 (m) below-cost pricing;
25 (n) bundled product or services pricing;
26 (o) most-favored-nation pricing;
27 (p) sale pricing;
28 (q) market development funds or demo budgets;
 (r) advertising funds;
 (s) non-price consideration;
 (t) loss-leader pricing;
 (u) early-pay discounts;
 (v) "min sell prices";
 (w) "closest thing to wholesale" prices;

- (x) builder prices;
- (y) spiffs or spivs; and
- (z) if and how these policies, procedures, practices, methods, formulas, or factors vary by buyer.

12. Your use of discounts, promotions, rebates or loyalty programs in connection with the sale of CRT Finished Products to Your customers, including how You recorded such discounts or rebates, and the identity and location of documents or data recording such discounts or rebates.

13. Other products that You believed were viewed by Your customers as alternatives to CRT Finished Products, including: (a) products other than CRT Finished Products; (b) the reasons that You believe Your customers viewed such products to be alternatives to the CRT Finished Products You purchased from the Defendants; (c) the extent to which these products had any effect on Your pricing decisions; and (d) the identity and location of documents that relate to the matters specified in this topic.

14. Your policies and practices relating to Your decision to give priority to the promotion, advertising, or sale of certain Defendants' CRT Finished Products over other Defendants' CRT Finished Products, to promote Defendants' CRT Finished Products over non-Defendants' CRT Finished Products, or to promote non-Defendants' CRT Finished Products over Defendants' CRT Finished Products.

15. All contracts or any other agreements relating to CRTs or CRT Finished Products between Circuit City and any entity, including the terms and conditions of any such contracts or agreements, including the scope of the agreement, choice of law, and forum selection.

16. Explanation of whether, based on records maintained by Circuit City, it is possible to link, trace, or otherwise establish a relationship between the CRTs or CRT Finished Products that Circuit City purchased to those that it sold and, if so, how.

17. Whether the CRTs contained in each of the CRT Finished Products on which Circuit City bases its claims were first shipped-to or billed-to a location outside the United States or inside the United States, and an explanation of how Circuit City made or would make that determination.

18. The identity of the manufacturer of the CRT contained in each of the CRT Finished Products on which Circuit City bases its claims, and an explanation of how Circuit City has made or would make that identification.

1 19. Whether You engaged in market monitoring activity for CRT Finished Products
2 and, if so, your practices, policies, and procedures concerning Your market monitoring activity
3 for CRT Finished Products including the following: (a) Your competitive intelligence activities;
4 (b) Your use of third-party data sources and market share/data analyses; and (c) Your knowledge,
5 use, and tracking of Your competitors pricing for CRT Finished Products, including the shop-out
6 database.

7 20. Circuit City's suspicions or beliefs that any manufacturer of CRTs was engaged in
8 any anticompetitive conduct relating to CRTs and the circumstances (including dates)
9 surrounding, and reasons for and sources of, such suspicions or beliefs, and any formal or
10 informal investigations conducted by Circuit City to confirm or deny such suspicions or beliefs.

11 21. The identification, description, date, location, source, and persons involved in all
12 statements that Circuit City read, heard, or otherwise became aware of upon which Circuit City
13 bases its contention that Defendants fraudulently concealed the alleged conspiracy from Circuit
14 City, including a description of Circuit City's reliance on any such statements.

15 22. The method(s) used by You to track inventory levels, link returns and sales, and
16 monitor product margins of CRT Finished Products that You sold, including any predecessor or
17 successor systems.

18 23. Your standards and practices with regard to tracking the purchases and sales of
19 CRT Finished Products for determining the profitability of sales, and for financial reporting
20 purposes, including the nature of the financial data available, the location of such data, and the
21 names of individuals responsible for maintaining such data.

22 24. The identity of each of Your electronic databases related to the purchases and sales
23 listed in Topics 6 or 11 above, and the contents of each such database, including the fields or
24 column headings used in such electronic databases.

25 25. The extent to which Circuit City passed on its costs in purchasing or acquiring
26 CRTs or CRT Finished Products to its customers.

27 26. The assignment of any claims asserted in the Complaint, including the
28 identification of the assignees, the identification of the assignors, the mechanism or form of said
assignments, the consideration received for any such assignment, and any agreements or plans for
the distribution of damages or settlement proceeds recovered in this action to the assignors.

29 27. Your policies and practices related to the retention and deletion of all documents
30 and data (including any of Your electronic databases, e-mail system, and any predecessor or
31 successor systems) related to the purchases and sales listed in Topics 6 or 11.

NOTICE OF DEPOSITION OF PLAINTIFF ALFRED H. SIEGEL,
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LIQUIDATING TRUST PURSUANT TO RULE 30(B)(6)

1 28. Circuit City's search for, production of, and all efforts to preserve any documents
2 that are potentially relevant to this or any other litigation or investigation concerning CRTs or
3 CRT Finished Products.

4 29. Identification, location, last known address, telephone number, and e-mail address
5 of any person having or believed to have any information regarding the foregoing topics or facts
underlying these topics.

6 30. Identification, location, last known address, telephone number, and e-mail address
7 of any person having or believed to have any documents or other electronic or non-electronic
8 files regarding the foregoing topics or facts underlying these topics, including any person having
9 or believed to have information regarding each of the fields contained in such files and the means
by which those fields were constructed.

10 31. A complete explanation of Your transactional sales and purchase data for CRTs or
11 CRT Finished Products, including any transactional-level sales data produced by You in this
12 action and the information contained in such data.

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NOTICE OF DEPOSITION OF PLAINTIFF ALFRED H. SIEGEL,
AS TRUSTEE OF THE CIRCUIT CITY STORES, INC.
LIQUIDATING TRUST PURSUANT TO RULE 30(B)(6)

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4 San Francisco, CA 94105
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6 Fax: 415-512-4077
7 Email: Hojoon.Hwang@mto.com

8 *Counsel for Defendants LG Electronics, Inc.*
9 *and LG Electronics U.S.A., Inc.*

10 Additional Counsel Listed on Signature Pages

11
12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN FRANCISCO DIVISION**

15 **In Re CATHODE RAY TUBE (CRT)**
16 **ANTITRUST LITIGATION**

17 No.: 07-cv-5944 SC—MDL NO. 1917

18 **CERTIFICATE OF SERVICE**

19 This Document Relates to:

20 **ALL ACTIONS**

21

22

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25

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2

CERTIFICATE OF SERVICE

3

4

5

I declare that I am employed with the law firm of Munger, Tolles & Olson LLP, 560 Mission Street, Twenty-Seventh Floor, San Francisco, California 94105. I am not a party to the within cause, and I am over the age of eighteen years. I further declare that on March 18, 2014, I served a copy of:

6

7

8

NOTICE OF DEPOSITION OF PLAINTIFF ALFRED H. SIEGEL, AS TRUSTEE OF THE CIRCUIT CITY STORES, INC. LIQUIDATING TRUST PURSUANT TO RULE 30(B)(6)

9

BY ELECTRONIC MAIL by sending a true copy thereof to the addressees, as stated below.

10 Steven Sklaver
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11 SUSMAN GODFREY LLP
1901 Avenue of the Stars, Suite 950
12 Los Angeles, California 90067
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13 Facsimile: (310) 789-3150
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SAVERI & SAVERI, INC.

25 *Interim Lead Counsel for the Indirect Purchaser Plaintiffs*

Interim Lead Counsel for the Direct Purchaser Plaintiffs

26

27

28

1

2

3 Executed on March 18, 2014 at San Francisco, California. I declare under penalty
of perjury under the laws of the United States of America that the foregoing is true and correct.

4

/s/ Laura K. Lin

Laura K. Lin

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Exhibit D

Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION
4

5 Case Number 07-5944 (SC)
6 MDL No. 1917

7 In Re: CATHODE RAY TUBE (CRT)
8 ANTITRUST LITIGATION
9 This Document Relates to
10 ALL ACTIONS

11 ----- x
12
13 VIDEO DEPOSITION OF STEVEN DEASON
14 Richmond, Virginia
15 Wednesday, April 23, 2014
16 SSS 10:58 a.m.

17
18 * * * * *

*Corrections made
06/03/2014*

RML

Page 2	Page 4
1	1
2	2 APPEARANCES:
3	3
4	4 William H. Bave, III
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9	9 wbave@whitecase.com
10	10 Appearng for the Toshiba entities
11	11
12	12
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15	15 200 Park Avenue
16	16 New York, NY 10166
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19	19 Appearng for the Panasonic Defendants
20	20
21	21
22	22
23	23
24	24
25	25
Page 3	Page 5
1	1
2 APPEARANCES:	2 APPEARANCES:
3 Jonathan Ross, Esquire	3 (All others below appearing by phone.)
4 John Pierre Lahad, Esquire	4
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6 1000 Louisiana Street	6 Alston & Bird LLP
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12	12 Appearng for the Dell Plaintiffs
13 Laura K. Lin, Esquire	13
14 Munger, Tolles and Olson LLP	14 Shaun van Horn, Esquire
15 560 Mission Street	15 Jenner & Block LLP
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20 Appearng for LG Electronics Defendants.	20 Appearng for the Mitsubishi Electric Defendants
21	21
22	22
23	23
24	24
25	25

2 (Pages 2 - 5)

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516-608-2400

Page 6			Page 8		
1			1		
2 APPEARANCES:			2 TABLE OF CONTENTS		
3 (All others below appearing by phone.)			3 Witness:		
4			4 STEVE DEASON	Page	
5 Robert J. Gralewski, Esquire			5 Examination		
6 Kirby McInerney LLP			6 by Ms. Lin	10	
7 825 Third Avenue, 16th Floor			7 by Mr. Bava	202	
8 New York, NY 10022			8 by Ms. Auguillo	227	
9 212.371.6600			9 by Mr. Roberts	238	
10 bgralewski@kmllp.com			10 by Mr. Gralewski	249	
11 Appearng for the Indirect Purchaser Plaintiffs			11 by Mr. Lahad	252	
12			12		
13			13 ****		
14 Michael Gawley, Esquire			14 INDEX OF DEFENDANTS EXHIBITS		
15 Kirkland and Ellis LLP			Exhibit Description Page		
16 555 California Street, 27th Floor			15		
17 San Francisco, CA 94104			Exhibit 2834 Memory Aide to witness 12		
18 415.439.1400			16 Exhibit 2835 Bates No. CC0572597 68		
19 michael.gawley@kirkland.com			Exhibit 2836 Bates No. CC 0567286 74		
20 Appearng for the Hitachi entities			17 Exhibit 2837 Bates No. CC 0148714 105		
21			Exhibit 2838 Bates No. CC 0572187 122		
22			18 Exhibit 2839 Bates No. CC 0569329 126		
23			Exhibit 2840 Bates No. CC 0543314 128		
24			19 Exhibit 2841 Bates No. CC 0314111 137		
25			Exhibit 2842 Bates No. CC 0389749 154		
			20 Exhibit 2843 Bates No. CC 0021806 169		
			Exhibit 2844 Bates No. CC 0606306 186		
			21 Exhibit 2845 Bates No. CC 0548555 198		
			Exhibit 2846 Bates No. CC 0604919 208		
			22 Exhibit 2847 Bates No. CC 0397160 219		
			Exhibit 2848 - Exhibit Jumped Over -		
			23 Exhibit 2849 Thomson Complaint 239		
			24 ****		
			25 ****		
Page 7			Page 9		
1 APPEARANCES: (1 PROCEEDINGS		
2 (All others below appearing by phone.)			2 (Before going on video and steno record.)		
3 Charles M. Malaise, Esquire			3 THE REPORTER: Before going on the		
4 Baker Botts, LLP			video, and steno record, it was stipulated by		
5 1299 Pennsylvania Avenue Northwest			all counsel that counsel did not have to		
6 Washington, DC 20004			repeat their appearances, that the same		
7 202.639.1117			appearances for the Brandy Fose deposition		
8 charles.malaise@bakerbotts.com			8 would apply in this deposition of Steven		
9 Appearng for the Phillips Defendants			9 Deason.		
10			10 (On the video and steno record.)		
11 John Brew, Esquire			11 THE VIDEOGRAPHER: Good morning still. 10:58:31		
12 Crowell & Moring			12 We are on the record. The time is 10:58:33		
13 1001 Pennsylvania Avenue, Northwest			13 approximately 10:58 a.m., and today's date is 10:58:36		
14 Washington, D.C. 20004			14 April 23. The year is 2014. 10:58:41		
15 202.624.2720			15 This is the videot deposition of Steven 10:58:43		
16 jbrew@crowell.com			16 Deason. 10:58:46		
17 Appearng for Target			17 My name is Gordon Croll. The court 10:58:47		
18			18 reporter here today is Steve Hubbard. 10:58:49		
19 Jeffrey S. Roberts, Esquire			19 We are here from Veritext National 10:58:52		
20 Faegre Baker & Daniels,			20 Deposition Litigation Services and this 10:58:55		
21 3200 Wells Fargo Center			21 deposition is being held at 20 North 8th 10:58:57		
22 1700 Lincoln Street			22 Street, Richmond, VA. 10:59:01		
23 Denver, Colorado 80203			23 The case is "In Re CRT" and would the 10:59:03		
24 303.607.3792			24 deponent please raise their right hand. 10:59:09		
25 Appearng for the Thomson Defendants			25 (Whereupon, STEVEN DEASON is sworn:) 10:59:12		

3 (Pages 6 - 9)

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Page 10		Page 12	
1 THE VIDEOGRAPHER: Counsel have already 10:59:16		1 A That is my understanding. 11:00:54	
2 identified themselves, and you may go 10:59:18		2 MR. LAHAD: I think you omitted part 12. 11:00:56	
3 forward. 10:59:21		3 MS. LIN: And a part of 12. 11:01:00	
4 MR. LAHAD: Just for the record, this is 10:59:24		4 MR. LAHAD: Yes, the first part of 12. 11:01:02	
5 John Lahad from Susman Godfrey for the 10:59:24		5 SKUs, discounts, promotions, rebates programs 11:01:03	
6 witness and the Trust now defending the 10:59:24		6 in connection with the sale of CRT finished 11:01:06	
7 witness. 10:59:27		7 products to your customers. 11:01:08	
8 EXAMINATION BY MS. LIN: 10:59:29		8 MS. LIN: Thank you. 11:01:10	
9 Q Good morning, Mr. Deason. 10:59:29		9 BY MS. LIN: 11:01:11	
10 A Good morning. 10:59:30		10 Q Mr. Deason, what did you do to prepare 11:01:12	
11 Q Thank you for being here today. Have 10:59:31		11 for today's deposition? 11:01:15	
12 you ever been deposed before? 10:59:33		12 A I reviewed my testimony in the LCD case 11:01:16	
13 A Yes. 10:59:35		13 and I met with counsel yesterday. 11:01:20	
14 Q In what cases have you been deposed? 10:59:35		14 Q Did you review any documents other than 11:01:22	
15 A I was deposed for our LCD case for 10:59:38		15 the transcript of that LCD deposition? 11:01:24	
16 Circuit City Trust. 10:59:42		16 A This document here that I brought with 11:01:27	
17 Q Did you serve as the 30(b)(6) witness in 10:59:43		17 me about my own personal employment history with 11:01:29	
18 that case? 10:59:45		18 Circuit City. 11:01:34	
19 A Yes, I did. 10:59:45		19 (Whereupon, Deposition Exhibit 2834 is marked for 11:01:34	
20 Q You understand that you will be serving 10:59:46		20 Identification.) 11:01:34	
21 as the 30(b)(6) witness in today's deposition? 10:59:47		21 MS. LIN: Why don't we go ahead and mark 11:01:37	
22 A Yes. 10:59:50		22 the document you brought with you as Exhibit 11:01:39	
23 Q I think you heard me go over these this 10:59:50		23 2834 and use this version and then trade with 11:01:43	
24 morning, so I will be brief, but I have a couple 10:59:53		24 you, if that's okay. 11:01:47	
25 of ground rules that I want to cover with you. 10:59:54		25 THE WITNESS: That is fine. 11:01:48	
Page 11		Page 13	
1 Let's try not to talk over one another 10:59:56		1 BY MS. LIN: 11:01:48	
2 so that our court reporter can get a clear record. 10:59:57		2 Q Thank you. You prepared Exhibit 2834 11:01:48	
3 Does that make sense? 11:00:00		3 just to help remember which positions you held at 11:01:51	
4 A Yes. 11:00:01		4 Circuit City? 11:01:54	
5 Q I will ask you to make a verbal answer 11:00:01		5 A Yes. 11:01:54	
6 instead of just nodding your head, does that make 11:00:04		6 Q Did you bring any other documents with 11:01:55	
7 sense? 11:00:06		7 you today to use at this deposition? 11:01:58	
8 A Yes. 11:00:06		8 A No. 11:02:00	
9 Q If you want to break at any time please 11:00:07		9 Q Did you talk to anyone other than your 11:02:01	
10 just let me know, I would ask that you finish if I 11:00:08		10 attorneys to help prepare for today's deposition? 11:02:02	
11 have a question pending and then I am happy to 11:00:12		11 A No. 11:02:05	
12 take a break. 11:00:13		12 Q Have you ever been employed by the 11:02:10	
13 Does that make sense? 11:00:14		13 Circuit City Liquidating Trust? 11:02:12	
14 A Yes, it does. 11:00:15		14 A Yes. 11:02:16	
15 Q I am going to hand you a document 11:00:16		15 Q When were you employed by the Liquidated 11:02:18	
16 previously marked as Exhibit 2831. Have you seen 11:00:18		16 Trust? 11:02:19	
17 this exhibit before? 11:00:28		17 A I have a consulting company, so I did it 11:02:20	
18 A Yes. 11:00:28		18 as an independent contractor, but I did so as part 11:02:24	
19 Q Do you understand this is the of today's 11:00:32		19 of the LCD case in answering interrogatories and 11:02:28	
20 deposition? 11:00:34		20 being the witness as I am again today. 11:02:34	
21 A Yes. 11:00:34		21 Q You are appearing today as the 11:02:39	
22 Q I understand you will be discussing 11:00:38		22 subcontract employee of Circuit City Trust? 11:02:43	
23 topics 1 through 3, Topic 6 as to subparts G and 11:00:41		23 A As an independent contractor, yes. 11:02:47	
24 H, 7 through 9, 11, 13, 14, 19 through 21 and 25. 11:00:46		24 Q Do you have any employer right now other 11:02:52	
25 Is that correct? 11:00:53		25 than your consulting company? 11:03:02	

4 (Pages 10 - 13)

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

	Page 14		Page 16
1 A No.	11:03:05	1 markets for the southern division markets.	11:06:16
2 Q What is your consulting company called?	11:03:07	2 I would also set the commissions for	11:06:19
3 A Deason Consulting, Incorporated.	11:03:09	3 those products and also functionally set the	11:06:26
4 Q Does Deason Consulting, Incorporated	11:03:13	4 price. All of this was at the buyer's key	11:06:35
5 provide services to any entities other than the	11:03:17	5 direction. It was called store merchandising. We	11:06:39
6 Circuit City Liquidating Trust?	11:03:20	6 had merchants. I had no buying responsibilities.	11:06:44
7 A Yes.	11:03:21	7 Q Focusing on your role from 1996 to 1998	11:06:55
8 Q Have you provided services to any of the	11:03:22	8 when you were a corporate category manager, what	11:06:58
9 parties in this litigation other than Circuit	11:03:25	9 did your responsibilities related to CRT finished	11:07:01
10 City?	11:03:28	10 products include in that role?	11:07:04
11 A I don't know if JVC is a party to this,	11:03:28	11 A Similar responsibilities. In this case,	11:07:06
12 but I have done some work in the last five years	11:03:32	12 I changed product categories, so I had video	11:07:11
13 for JVC.	11:03:35	13 product that included camcorders, VCRs, a	11:07:19
14 Q Is your previous employment with Circuit	11:03:43	14 combination product, and did the same sort of	11:07:24
15 City Stores reflected in Exhibit 2834?	11:03:46	15 duties that I had done for the southern division,	11:07:28
16 A Yes, it is.	11:03:49	16 I now did for the entire country and because we	11:07:30
17 Q In any of the positions reflected in	11:03:50	17 were both physically located in Richmond,	11:07:34
18 2834, did you have responsibility related to CRT	11:03:55	18 Virginia, I had worked much more closely with the	11:07:38
19 finished products?	11:04:01	19 buyer.	11:07:41
20 A Yes.	11:04:01	20 Although I had no buying responsibility	11:07:41
21 Q When I refer to CRT finished products,	11:04:04	21 during that period of time, I did sit in on quite	11:07:46
22 do you understand that to mean products that	11:04:07	22 a few buyer vendor discussions including	11:07:50
23 containing CRTs?	11:04:08	23 negotiations.	11:07:55
24 A Yes.	11:04:11	24 Q Did your responsibilities change between	11:07:57
25 Q Which of the positions reflected on	11:04:11	25 your corporate category manager role and your	11:08:00
	Page 15		Page 17
1 Exhibit 2834 did you have responsibility for CRT	11:04:14	1 following role as a national buyer?	11:08:02
2 finished products?	11:04:18	2 A Correct. Once I became the national	11:08:04
3 A In 1992 to 1995, I was southern division	11:04:20	3 buyer, then I am the lead in actually negotiating	11:08:08
4 product manager for ACE in SOHO, and SOHO stands	11:04:25	4 the purchases and managing the product so that	11:08:12
5 for small office home office and in that capacity	11:04:27	5 others would do the role that I used to do, but my	11:08:17
6 I was involved with computer monitors.	11:04:35	6 role would include the actual purchase.	11:08:23
7 Also as corporate category manager,	11:04:48	7 Q And your role related to the actual	11:08:27
8 senior category management video, from 1996 to	11:04:54	8 purchase that included purchasing the combination	11:08:30
9 1998, I would have been involved with what we call	11:04:58	9 products we discussed previously?	11:08:34
10 combination products which are products that have	11:05:05	10 A Yes, not for the entire period of 1998	11:08:34
11 both a CRT and a DVD or a VCR built into them, and	11:05:08	11 to 2002, but approximately the first couple of	11:08:38
12 I was also during the period of 1998 to July 2002,	11:05:15	12 years. We had an assistant buyer come on during	11:08:41
13 a national buyer for camcorders and VCRs, for	11:05:21	13 that period. I cannot speak to the exact date who	11:08:44
14 approximately two years of that period. I also	11:05:25	14 took it over.	11:08:48
15 had responsibilities that included those same type	11:05:29	15 Q At any other point in time, did you have	11:08:49
16 of combo products.	11:05:31	16 responsibility related to buying CRT finished	11:08:51
17 Q Going on your position from 1992 to	11:05:42	17 products?	11:08:54
18 1995, what did your responsibilities, related to	11:05:45	18 A No.	11:08:54
19 computer monitors, include?	11:05:49	19 MR. GRALEWSKI: Objection, form.	11:08:56
20 A I would be responsible for a division of	11:05:52	20 BY MS. LIN:	11:09:16
21 the company, the southern division. It's a group	11:05:56	21 Q When I refer to Circuit City, I will be	11:09:16
22 of stores in the Southeast based out of Atlanta,	11:05:58	22 referring to Circuit City Stores, Inc., do you	11:09:18
23 Georgia, and for of those stores I would choose	11:06:02	23 understand?	11:09:21
24 which stores would get which product and I would	11:06:05	24 A Yes.	11:09:21
25 choose what products were in the ads for those	11:06:10	25 Q From describing your roles at Circuit	11:09:22

5 (Pages 14 - 17)

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

Page 18	Page 20
1 City, it sounds like Circuit City was divided into 11:09:26 2 regional divisions, is that right? 11:09:30	1 but I do know some specific people who fall along 11:12:47 2 the way. 11:12:51
3 A It was until 1995, so from the period of 11:09:31 4 time that we are talking about today it was not. 11:09:34	3 I am not just sure that I could rattle 11:12:53 4 off everybody there were, but quite a few people 11:12:54
5 Q Was Circuit City divided into any other 11:09:39 6 types of divisions until after 1995? 11:09:42	5 involved over that period of time. 11:12:56 6 Q Quite a few people involved as national 11:12:58
7 A Operations continued to have divisions, 11:09:46 8 but merchandising did not. 11:09:50	7 buyers during that time? 11:12:59
9 Q Were CRT finished products sales 11:09:58 10 purchased on a national level after 1995? 11:10:03	8 A Yes. 11:13:02
11 MR. LAHAD: Objection, form. 11:10:07	9 Q Will you tell me the names of those 11:13:02 10 buyers just to the extent that you remember them? 11:13:03
12 BY MS. LIN: 11:10:07	11 A Also I have to caution that I know that 11:13:08 12 they bought on the TV Team, whether they 11:13:11
13 Q You can answer unless he instructs you 11:10:12 14 not to. 11:10:15	13 specifically bought CRT, I may be in error. 11:13:15 14 Rick Souder who was a buyer for the TV 11:13:18
15 A Yes, they were purchased on a national 11:10:16 16 level and they were also purchased on a national 11:10:18	15 Team during this period, and also a division 11:13:22 16 merchandise manager, which is like supervisors 11:13:26
17 level before 1995. I had no buying 11:10:20 18 responsibilities when I was in a divisional role. 11:10:24	17 buyers, so he would have been involved. 11:13:28
19 Q Were there positions equivalent to a 11:10:30 20 division product manager's role that you held in 11:10:38	18 Andy Schultz -- I will not try that 11:13:38
21 1992 through 1995 after 1995? 11:10:40	19 one -- was also involved, Danny Cagwin, Doug 11:13:42
22 A No. 11:10:46	20 Moore, I believe, was involved at the very end of 11:13:46
23 Q Which positions took over the 11:10:50 24 responsibilities that you had in that southern 11:10:55	21 this period. Tom Croll, Igor Anshakov. I will 11:13:52 22 stop at that point. 11:14:15
25 division product manager role? 11:10:58	23 Q Thank you. Did you collaborate with any 11:14:17 24 of the employees you just listed in determining 11:14:21 25 the CRT finished product purchases? 11:14:25
Page 19	Page 21
<i>new</i>	
1 A Originally, these roles were taken over 11:11:00 2 by the next two positions that I list which is 11:11:07	1 MR. LAHAD: Objection, form. 11:14:30
3 corporate market manager and corporate category 11:11:10 4 manager, and when I became a buyer those positions 11:11:13	2 THE WITNESS: I don't know what you mean 11:14:31
5 in 1998, those positions no longer existed and the 11:11:18 6 buyer handled both the responsibilities that these 11:11:22	3 by collaborate. 11:14:33
7 positions had handled before and the 11:11:28 8 responsibilities that the buyers had held before. 11:11:31	4 BY MS. LIN: 11:14:33
9 Q Do I understand correctly that in 1998, 11:11:41 10 Circuit City consolidated the category manager and 11:11:45	5 Q Did you have any shared responsibilities 11:14:34
11 buyer roles into one role? 11:11:48	6 with any of the employees you just listed that 11:14:36
12 A Yes. 11:11:49	7 were related to CRT finished products? 11:14:37
13 Q Were there national buyers with 11:11:57 14 responsibility for CRT finished products other 11:12:01	8 A We shared time together. We visited 11:14:45
15 than you? 11:12:03	9 suppliers together. We did not have shared 11:14:50
16 A Yes. 11:12:05	10 responsibilities if I understand the question 11:14:53
17 Q How many positions were there related to 11:12:06 18 CRT finished products at the national buyer level? 11:12:10	11 correctly. 11:14:55
19 A I do not know. 11:12:16	12 Q Do you know how many stores Circuit City 11:15:03
20 Q Do you know who acted as a national 11:12:25 21 buyer for CRT finished products at any point in 11:12:28	13 had during the relevant time period and we can go 11:15:05
22 time other than yourself? 11:12:31	14 by year if that is a more reasonable way to do it. 11:15:08
23 A I know of ones, but it's a long period 11:12:33 24 of time. I believe we provided org charts which 11:12:36	15 A I am not going to get that accurate, but 11:15:10
25 are probably a lot more accurate than my memory, 11:12:43	16 you're talking about a period of time that we were 11:15:12
	17 probably below 400 and at our peak somewhere 11:15:17
	18 around 650 to 660. 11:15:22
	19 Q Do you know during the relevant period 11:15:29
	20 what percentage of those stores were located in 11:15:31
	21 California? 11:15:34
	22 A No. 11:15:35
	23 Q Would there be a way to find that out? 11:15:36
	24 A You could if you looked at the reports 11:15:40
	25 and counted all the stores and then counted it 11:15:44

6 (Pages 18 - 21)

VERITEXT REPORTING COMPANY

212-267-6868

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516-608-2400

Page 22		Page 24	
1 out, but as far as doing it quickly, no.	11:15:47	1 Q Was there a particular subdivision	11:18:06
2 Q Do you know the percentage of Circuit	11:15:53	2 within the merchandising department that had	11:18:08
3 City Stores during the relevant period that were	11:15:55	3 responsibility for CRT finished product purchases?	11:18:11
4 located in Illinois?	11:15:57	4 A I'm not sure what you would call them.	11:18:15
5 A No.	11:15:58	5 We had groups that were broken out managed by	11:18:24
6 MR. LAHAD: A real quick one. One of	11:16:00	6 different groups, so you would have a general	11:18:29
7 the things that we have not done yet on this	11:16:01	7 manager who would manage a group of products.	11:18:30
8 record as we did in the previous deposition	11:16:04	8 Most of the period we are talking about,	11:18:34
9 is to define relevant time period, so we are	11:16:04	9 there would have been a video department where you	11:18:37
10 still talking about March 1995 to November	11:16:06	10 had a general manager who was over the video	11:18:40
11 2006?	11:16:09	11 product.	11:18:45
12 MS. LIN: Thank you, yes. Does that	11:16:09	12 It was later called Display and at some	11:18:46
13 make sense?	11:16:11	13 points it might have also had audio product in it.	11:18:50
14 THE WITNESS: Yes.	11:16:11	14 We also had a division merchandise	11:18:55
15 MS. LIN: Great.	11:16:12	15 manager, so you had a vice president of	11:19:01
16 MR. LAHAD: Sorry, did I say six?	11:16:14	16 merchandising, you had a general manager that	11:19:01
17 MR. ROSS: You did.	11:16:15	17 broke these groups in, and then you had a	11:19:06
18 MS. LIN: I am sorry, so we're about	11:16:15	18 divisional merchandise manager who would have	11:19:07
19 March 1995 through November 2007 as the	11:16:15	19 having separate groups.	11:19:09
20 relevant period.	11:16:20	20 For example, in this case, since we're	11:19:11
21 MR. LAHAD: Okay.	11:16:21	21 talking about CRT, the display was one DMM, and	11:19:12
22 MS. LIN: Does that make sense?	11:16:21	22 all video product that was not display was the	11:19:18
23 THE WITNESS: Yes.	11:16:23	23 other DMM, and that was the DMM that I worked for	11:19:22
24 MS. LIN: Great.	11:16:24	24 which had the combo product and other products	11:19:27
25 BY MS. LIN:	11:16:25	25 that are not CRT product.	11:19:30
Page 23		Page 25	
1 Q Did Circuit City have any stores named	11:16:25	1 Q Do you know which of those two groups	11:19:33
2 something other than Circuit City during the	11:16:27	2 you were just talking about would have	11:19:36
3 relevant time period?	11:16:29	3 responsibility related to CRT finished products	11:19:38
4 A We had stores, yes. We had stores in	11:16:34	4 that were monitors?	11:19:40
5 Canada that would not be part of the records that	11:16:41	5 A I am sorry. I left that group out.	11:19:42
6 we have been talking about.	11:16:44	6 That would have been a separate group that we	11:19:45
7 We previously had stores called Circuit	11:16:47	7 called the SOHO group and that group was all small	11:19:47
8 City Express, but I believe they were all closed	11:16:49	8 office home office would include everything that	11:19:53
9 before this time period.	11:16:54	9 had to do with computers and usually some other	11:19:57
10 Q Did your responsibilities in any of your	11:17:00	10 category, but predominantly computers.	11:20:02
11 positions for Circuit City relate to products	11:17:03	11 Q Was that SOHO group located in one	11:20:05
12 eventually sold in Canada?	11:17:07	12 location?	11:20:09
13 A No.	11:17:08	13 A Yes.	11:20:09
14 Q Do you know if any of the employees you	11:17:10	14 Q Where was that location?	11:20:10
15 listed who had responsibility related to CRT	11:17:12	15 A Richmond.	11:20:12
16 finished product purchases had responsibilities	11:17:15	16 Q Is that true throughout the relevant	11:20:13
17 related to CRT finished product sales in Canada?	11:17:18	17 period?	11:20:15
18 A They did not.	11:17:26	18 A Yes.	11:20:15
19 Q Which divisions of Circuit City had	11:17:38	19 Q For the display group that had	11:20:16
20 responsibilities related to the purchase of CRT	11:17:41	20 responsibilities related to CRT finished products	11:20:20
21 finished products during the relevant period?	11:17:44	21 other than monitors, was that group concentrated	11:20:23
22 A The merchandising department would be	11:17:46	22 in one location?	11:20:27
23 responsible. It is not a division, but is a	11:17:50	23 A Yes.	11:20:28
24 department that was responsible for purchase of	11:17:53	24 Q Where was that location?	11:20:29
25 all Circuit City products for resale.	11:17:56	25 A Richmond.	11:20:30

7 (Pages 22 - 25)

VERITEXT REPORTING COMPANY

212-267-6868

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516-608-2400

Page 26		Page 28	
1 Q Was that true throughout the relevant period?	11:20:31	1 A The buyer may choose to put the product on sale. The store may choose to change the price based on predetermined competitors and you could also have the store change the price if the product is damaged.	11:23:01
2 A Yes.	11:20:33	2 11:23:04	3 11:23:14
3 Q Was there a position at Circuit City that had responsibility related to the deciding of which brands of CRT finished products to purchase?	11:20:34	4 11:23:19	5 11:23:23
4 A The buyer chooses which products to buy.	11:20:46	6 Q You mentioned that a store could change a price based on predetermined competitors?	11:23:36
5 Q Were Circuit City's buyers concentrated in any one location?	11:20:43	7 A Yes.	11:23:42
6 A They were all in the headquarters in Richmond.	11:21:01	8 Q How did that process work?	11:23:42
7 Q Were there any buyers throughout the relevant period located at another location other than Richmond?	11:21:04	9 A Again, because it's a long period of time, the specifics would change, but the general process was that the operations group that runs the stores in conjunction with the buyers would make a determination of who the key competitors were for that store, that area, that region, or national, and set out the rules that said, "We will react to this or we will get reacting," because they were not all solid.	11:23:48
8 A No.	11:21:13	10 You would have a review that says, "Here are the pieces that we don't look competitive on." Now there is a discussion about whether we will react or not.	11:23:54
9 Q Was there a position at Circuit City that had the ultimate authority to approve a buyer's decision of which vendors to purchase CRT products from?	11:21:16	11 Q Did the stores have the independent ability to react to those prices?	11:23:58
10 A I'm not sure I understand the question.	11:21:31	12 A Yes had very short windows, so again,	11:24:02
11 Q Was there anyone supervising the buyers' decisions of which vendors to purchase CRT finished products from?	11:21:33		11:24:07
12 A The buyers had supervisors, but it was not common practice for the supervisors to direct	11:21:36		11:24:14
13 the purchases.	11:21:38		11:24:21
14 Q Was it the buyers who were responsible for negotiating CRT finished product costs?	11:22:00		11:24:28
15 A Yes.	11:22:02		11:24:29
16 Q Was there a division at Circuit City responsible for settling the prices at which CRT finished products would be sold?	11:22:10		11:24:30
17 A Yes.	11:22:05		11:24:35
18 Q What was that division?	11:22:18		11:24:38
19 A Also the merchandising division and also specifically the buyer.	11:22:21		11:24:41
20 Q Did the buyer have final authority on the ultimate sales price of a CRT finished product?	11:22:24		11:24:44
21 MR. LAHAD: Objection, form.	11:22:35		11:24:47
22 THE WITNESS: Again, I am not sure exactly what you mean when you say by "final authority." The buyers set the price.	11:22:38		
23 BY MS. LIN:	11:22:39		
24 Q After a buyer sets a price at which a CRT finished product would be sold, were there any means by which that price would change?	11:22:45		
25 A Yes.	11:22:48		
26 Q How might a price set by a buyer for the sale of a CRT finished product change?	11:22:54		
	11:22:57		
Page 27		Page 29	
1 Q Was it the buyers who were responsible for negotiating CRT finished product costs?	11:22:35	1 A The operations groups are literally the people who run the stores, your store managers, your district managers, the sales associates, everybody that is in the store.	11:24:51
2 A Yes.	11:22:39	2 11:24:55	3 11:24:59
3 Q Did the buyer have final authority on the ultimate sales price of a CRT finished product?	11:22:42	4 Sometimes that became much shorter, and sometimes it got eliminated, sometimes we eliminate reacting during the Christmas period.	11:25:03
4 A Yes.	11:22:45	5 Q You mentioned an operations group, what are those?	11:25:06
5 Q What was that division?	11:22:48	6 A The operations groups are literally the people who run the stores, your store managers, your district managers, the sales associates, everybody that is in the store.	11:25:19
6 A Also the merchandising division and also specifically the buyer.	11:22:51	7 Q Is each store a distinct operating group?	11:25:21
7 Q Did the buyer have final authority on the ultimate sales price of a CRT finished product?	11:22:54	8 A Yes, as far as us being able to identify them, obviously, they are Circuit City Stores, Inc., but each store has a number.	11:25:25
8 A Yes.	11:22:57	9 Q Do you recall the sizes of CRT televisions that Circuit City sold during the relevant period?	11:25:32
9 Q How might a price set by a buyer for the sale of a CRT finished product change?	11:22:57	10 A I could probably rattle off most of them just from – well, actually used to sell them. So we had the 13 inch, the 19 inch, and 20 inch and 24 inch and I believe there was a period where we had 30, and 35, and 40 inch.	11:25:37
			11:26:06
			11:26:08
			11:26:11
			11:26:16
			11:26:20
			11:26:23

8 (Pages 26 - 29)

VERITEXT REPORTING COMPANY

212-267-6868

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516-608-2400

Page 30	Page 32
1 All of those would have been displayed. 11:26:26	1 period. 11:29:26
2 There may have been some other sizes like 21 in 11:26:28	2 There were console televisions, for 11:29:27
3 there. Monitors worked a little different. 11:26:31	3 example, so you would have somebody that was in 11:29:31
4 For a long time, especially CRT 11:26:37	4 charge of console televisions versus portable 11:29:33
5 monitors, were pretty much all 13 inch and then 11:26:40	5 televisions so there was always some division. 11:29:37
6 there were some 19 inch, and these, of course, are 11:26:44	6 Those are represented as classes in most 11:29:41
7 measured diagonally. 11:26:48	7 cases in our documents, and in some cases, they 11:29:47
8 When I bought the combo product, I 11:26:52	8 also go down to a tier level, but most buyer 11:29:51
9 believe our largest ones were 20, if I am not 11:26:56	9 responsibility was at a class level. 11:29:55
10 mistaken, so we had 13 inch, 19 inch, and 20 inch. 11:27:03	10 Q There were tiers within the classes? 11:29:59
11 Q Did the sizes of CRT finished products 11:27:08	11 A Yes. 11:30:01
12 that Circuit City sold change over the course of 11:27:12	12 Q Do you recall when Circuit City 11:30:02
13 the relevant period? 11:27:14	13 discontinued selling CRT televisions? 11:30:04
14 A Yes. 11:27:16	14 A I thought we were selling them when we 11:30:07
15 Q Do you recall if there were any trends 11:27:18	15 shut down, but I don't know. 11:30:13
16 in the way they were changing over the relevant 11:27:19	16 Q Do you know if Circuit City at any point 11:30:15
17 period? 11:27:21	17 discontinued selling CRT monitors? 11:30:18
18 A They became larger. So there were 11:27:24	18 A I do not, no. 11:30:21
19 introductions of larger and larger sizes during 11:27:29	19 THE REPORTER: That answer always 11:30:22
20 the period and that is about all I can say for 11:27:32	20 stumbles me. "I do not know" is that k n o 11:30:22
21 sure. 11:27:38	21 w? Or is it "I do not, no," period. 11:30:22
22 Q Was there any position at Circuit City 11:27:41	22 THE WITNESS: K n o w. 11:30:22
23 responsible for deciding what size CRT finished 11:27:44	23 THE REPORTER: Thank you. 11:30:22
24 products to purchase at a given time? 11:27:47	24 BY MS. LIN: 11:30:22
25 A The buyer would make the decision with 11:27:49	25 Q Did Circuit City have different 11:30:40
Page 31	Page 33
1 some guidance from their supervisors on capacity 11:27:54	1 procurement procedures related to CRT monitors 11:30:43
2 because you might have a buyer who buys nothing 11:28:03	2 versus CRT televisions? 11:30:45
3 but 13 inch and another buyer buys 19 inch, and 11:28:07	3 A The procedures would have been the same. 11:30:49
4 you only have that amount of display space, so 11:28:11	4 Q How did Circuit City's buyers identify 11:30:55
5 there has to be a consensus on how many inches ^{each} 11:28:14	5 the CRT finished products they wanted to purchase? 11:30:58
6 is going to have. 11:28:19	6 A This could be a long answer. Quite a 11:31:02
7 Q Was there a way that buyers' 11:28:19	7 few different factors. You start off demand. 11:31:09
8 responsibilities were divided among CRT products, 11:28:22	8 You have got historical demand that you 11:31:14
9 for instance, by product size or product vendor? 11:28:25	9 are looking at that says, "We have sold so many of 11:31:18
10 A Yes. 11:28:29	10 these at a certain price, et cetera," and you 11:31:21
11 Q How did that division work? 11:28:30	11 combine that with industry forecast on what you 11:31:23
12 A It would have been changed over the 11:28:33	12 believe is going to be the demand over the period 11:31:29
13 years, but it would have been based on specific 11:28:35	13 of time usually a year at a time. 11:31:32
14 features, so for example, when CRT was bigger as a 11:28:40	14 After you have done your general demand 11:31:39
15 business you might have predominantly done by 11:28:48	15 which is combined with what your available space 11:31:43
16 size. 11:28:53	16 is, you're going to make your determinations on 11:31:47
17 Once other display products were 11:28:55	17 the size of this. 11:31:53
18 introduced, then there was more division by the 11:28:59	18 Once you have got the size of the 11:31:57
19 type of display so you may have CRT, you may have 11:29:02	19 assortment, then you listen to the presentations 11:31:59
20 projection television, and so on. 11:29:06	20 from all the vendors that we either are doing 11:32:02
21 Q Do you recall approximately when Circuit 11:29:08	21 business with, or that want to do business with 11:32:06
22 City changed that division to focus on product 11:29:11	22 us, and make the decisions based on, again, demand 11:32:09
23 types of televisions? 11:29:14	23 first. 11:32:17
24 A Each introduction requires you to do so. 11:29:18	24 You might be meeting with Sony and you 11:32:17
25 There was always some division prior to this 11:29:23	25 know that Sony's is 25 percent of the industry. 11:32:21

9 (Pages 30 - 33)

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Page 34	Page 36
1 So it is probably reasonable to carry 25 percent 11:32:25	1 when other vendors requested the opportunity to 11:35:30
2 of your assortment in Sony. 11:32:29	2 present us product, and in some rare cases because 11:35:34
3 Then you go to all of the other factors 11:32:33	3 we did business with most vendors, in rare cases 11:35:42
4 which, of course, includes costs and it includes 11:32:36	4 we might reach out to a vendor that we currently 11:35:46
5 the vendor's performance history, have they been 11:32:46	5 are not doing business with, and say, "We have an 11:35:48
6 on time with delivery, have they kept you in 11:32:50	6 interest." 11:35:52
7 stock, have they supported the sell through 11:32:53	7 Q In those rare cases when Circuit City 11:35:56
8 product? There are a lot of other smaller factors 11:32:59	8 would reach out to a vendor and express an 11:35:58
9 that come into it, but that is basically the 11:33:04	9 interest, do you know why Circuit City would do so 11:36:00
10 process. 11:33:07	10 in this CRT finished product context? 11:36:05
11 Q You referenced determining the size of 11:33:11	11 A Either we saw that there was demand for 11:36:07
12 an assortment. Does that mean the number of 11:33:14	12 their product or there was what we would refer to 11:36:13
13 products? 11:33:16	13 as a role in assortment, meaning, there was a role 11:36:17
14 A Yes. 11:33:16	14 that we needed playing that our current vendors 11:36:21
15 Q Is there any industry forecasting that 11:33:27	15 could not provide. 11:36:25
16 Circuit City typically relied on in selecting its 11:33:27	16 For example, it might be that none of 11:36:26
17 CRT finished product purchases was done on an 11:33:29	17 the suppliers that we have are doing business with 11:36:30
18 annual basis? 11:33:32	18 a specific price point, and so we know that a 11:36:35
19 A Most of our plans were done on an annual 11:33:33	19 vendor that we are not doing business with has a 11:36:40
20 basis because of both the cycle of introduction of 11:33:38	20 product at that price and we would contact them, 11:36:43
21 product and because of budget planning, et cetera. 11:33:42	21 and say, "Are you interested in selling that to 11:36:46
22 Those would be revamped generally about 11:33:48	22 us?" 11:36:48
23 half way through the year, you might make some 11:33:51	23 Q You also reference in your answer 11:36:50
24 additional purchases and you may stop buying some 11:33:54	24 regarding procurement procedures that, for 11:36:52
25 of the products that you bought before, but you 11:33:59	25 instance, if Sony had 25 percent of the market 11:36:56
Page 35	Page 37
1 generally did not change the whole assortment. 11:34:03	1 that Circuit City might want 25 percent of its 11:36:59
2 CRTs, television products specifically, 11:34:07	2 assortment to come from Sony, do you remember that 11:37:01
3 had a very strong fall introduction period, and so 11:34:11	3 testimony? 11:37:04
4 it did not match, Circuit City's fiscal year was 11:34:17	4 A Yes. 11:37:05
5 from March to February if I remember correctly, so 11:34:24	5 Q Would Circuit City generally try to 11:37:05
6 it did not match the fiscal year quite the same as 11:34:27	6 match the percentage market share of its vendors 11:37:08
7 some of the categories that I managed, and did, so 11:34:31	7 in the market with the products Circuit City would 11:37:11
8 they were a little more active on the every six 11:34:33	8 be selling from those vendors? 11:37:16
9 months basis than other categories. 11:34:38	9 A Generally is too open for me to answer 11:37:21
10 Q Typically CRT finished product purchase 11:34:40	10 that as a yes or no. We took it in as a factor 11:37:25
11 decisions would be made on a semi-annual basis? 11:34:43	11 and we would want to know and we would want to be 11:37:30
12 A Yes. 11:34:47	12 deliberate in the fact that we were under buying 11:37:36
13 MR. LAHAD: Objection, misstates the 11:34:49	13 or over buying a particular vendor and know that 11:37:41
14 testimony. Give me a second to butt in. 11:34:50	14 we had done so. 11:37:45
15 THE WITNESS: You have to kick me. 11:34:56	15 Q You would want to make a particular 11:37:49
16 BY MS. LIN: 11:34:58	16 decision if you were going to purchase a vendor's 11:37:59
17 Q You referenced earlier that in making 11:34:58	17 quantities either above or below their market 11:38:01
18 its CRT finished product purchasing decisions 11:35:01	18 share in the entire market? 11:38:04
19 Circuit City's buyers would listen to vendor 11:35:04	19 A We would want to know that we were doing 11:38:06
20 presentations, how would the specific vendors be 11:35:07	20 so, and it would be deliberate that we had done 11:38:09
21 selected to give these presentations? 11:35:12	21 so. 11:38:11
22 A They would be selected based on the fact 11:35:15	22 I will give you one example. We may 11:38:13
23 that you had been doing business with them. 11:35:20	23 look at a product that's only carried at Wal-Mart 11:38:16
24 If you were doing business with them, 11:35:23	24 and it is 10 percent of the market share. 11:38:23
25 then you would be talking to them again, and also 11:35:27	25 We are not necessarily going to go out 11:38:28

10 (Pages 34 - 37)

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212-267-6868

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Page 38	Page 40
1 and buy that 10 percent because of the role that 11:38:29	1 what you carry in the store, but they do not sell. 11:41:40
2 it's playing for that product. 11:38:33	2 You are only buying like one a month or 11:41:44
3 There are demand brands and so if there 11:38:34	3 one every other month, so that doesn't fit the 11:41:47
4 is a high demand brand, and the way we would 11:38:38	4 rest of our way we do business where we are buying 11:41:53
5 define demand brands, is a brand that the customer 11:38:41	5 directly from the vendor. 11:41:58
6 walks in the door, and if they do not see it they 11:38:44	6 Q Do you know whether the distributors 11:42:02
7 are likely not to buy from you, and so, those are 11:38:46	7 from which Circuit City purchased CRT finished 11:42:05
8 typically the brand names that are off the top of 11:38:50	8 products were located exclusively within the 11:42:08
9 your head as a consumer and those products we 11:38:54	9 United States? 11:42:11
10 would be more likely to buy closer to demand. 11:39:02	10 A I believe that's the case. 11:42:14
11 Q Do you recall which vendors during the 11:39:12	11 Q Do you know whether the manufacturers 11:42:17
12 relevant period sold demand brand CRT finished 11:39:15	12 from which Circuit City purchased its CRT finished 11:42:23
13 products? 11:39:18	13 products were located exclusively within the 11:42:27
14 A Again, their relevant demand would 11:39:20	14 United States? 11:42:30
15 change, but typically, all of the major brands, 11:39:24	15 A All of the buyers negotiations and 11:42:30
16 Hitachi, Sony, JVC, and Toshiba they all had a 11:39:29	16 purchases were done with U.S. held companies that 11:42:36
17 significant market share, and again, if it's a 11:39:39	17 I, yes, experienced in seeing, et cetera. 11:42:41
18 major brand name that the consumer is going to 11:39:48	18 MR. GRALEWSKI: I apologize, the witness 11:42:51
19 know, then buy. 11:39:53	19 cut out. Could I ask the court reporter to 11:42:53
20 Q Do you know if LG Electronics was ever a 11:39:59	20 read back that answer. 11:42:55
21 demand brand for CRT finished products during the 11:40:03	21 (Whereupon, record was read.) 11:43:09
22 relevant period? 11:40:05	22 BY MS. LIN: 11:43:09
23 A I do not know. 11:40:06	23 Q When you say U.S. held companies, do you 11:43:10
24 Q Did Circuit City ever purchase its CRT 11:40:12	24 mean companies headquartered in the United States? 11:43:13
25 from its products direct from the CRT finished 11:40:16	25 A Yes. 11:43:16
Page 39	Page 41
1 products manufacturers? 11:40:18	1 Q Are you aware of any exceptions in which 11:43:18
2 A I don't know because I don't believe 11:40:24	2 CRT finished products purchases were negotiated 11:43:20
3 that we would know who made the CRT. 11:40:27	3 with manufacturers located outside of the United 11:43:25
4 Q From the manufacturer creating the CRT 11:40:32	4 States? 11:43:27
5 finished product, did Circuit City ever purchase 11:40:36	5 A I don't know. I am not saying that the 11:43:32
6 directly from those manufacturers? 11:40:39	6 product wasn't manufactured outside of the United 11:43:36
7 A Yes. 11:40:41	7 States. 11:43:38
8 Q Were there instances when Circuit City 11:40:42	8 I am saying that we would deal with a 11:43:39
9 purchased CRT finished products from distributors 11:40:45	9 company and they may have an outside of the U.S. 11:43:42
10 who were not the manufacturers of the CRT finished 11:40:47	10 presence, most of them did, but when we negotiated 11:43:47
11 products? 11:40:50	11 price and we created a purchase order, those 11:43:51
12 A Our experience with distributors was 11:40:54	12 purchase orders were to their U.S. held divisions 11:43:55
13 pretty limited to extremely small purchases that 11:40:57	13 or otherwise you would be importing the product 11:44:03
14 were used for our e-Commerce division. 11:41:02	14 and that is something that they did, not us, as 11:44:06
15 Q Were there other instances besides 11:41:10	15 far as I know of. 11:44:11
16 e-Commerce where Circuit City would purchase CRT 11:41:13	16 Q Are you aware of any instances when 11:44:17
17 finished products from distributors? 11:41:15	17 Circuit City's purchase orders for CRT finished 11:44:19
18 A I don't know of any case. I never did. 11:41:18	18 products were sent outside of the United States? 11:44:21
19 Q Do you know why distributors were used 11:41:20	19 A I believe the U.S. group would share 11:44:26
20 in e-Commerce context? 11:41:22	20 their purchase orders with all of their companies, 11:44:29
21 A Because of the size of purchase. 11:41:24	21 so conversations about forecasted need were back 11:44:31
22 Q Would that be because it was a 11:41:28	22 and forth between a supplier at every level and 11:44:42
23 small-size purchase? 11:41:30	23 Circuit City at several levels. 11:44:48
24 A Yes. We are talking about -- so you 11:41:31	24 Q I'm sorry. You've lost me. Do you mean 11:44:52
25 want to put maybe four more items on the web than 11:41:37	25 suppliers within Circuit City? 11:44:55

11 (Pages 38 - 41)

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212-267-6868

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516-608-2400

Page 42		Page 44	
1 A No, vendors. I changed the word for	11:44:56	1 A Correct.	11:48:12
2 you. I am sorry. But because the U.S. group had	11:44:58	2 Q Was there a process that Circuit City	11:48:12
3 to make sure that we had adequate supply, they	11:45:04	3 used to negotiate that cost for CRT finished	11:48:14
4 would have to share any information about	11:45:08	4 products?	11:48:18
5 purchases and sales with their entire company.	11:45:10	5 A There wasn't a formalized, "This is the	11:48:18
6 Q I'm not sure I'm understanding, so the	11:45:19	6 process," if that is what you are looking for.	11:48:35
7 vendors that Circuit City was speaking to in the	11:45:21	7 But just the act of doing it creates a	11:48:38
8 United States, Circuit City understood them, them	11:45:23	8 process, and the standard, so the standard	11:48:41
9 being the vendor, to share information throughout	11:45:25	9 function is you understand what the product that	11:48:46
10 the vendor's company?	11:45:29	10 the vendor wants to make the cost and then it is a	11:48:52
11 A Correct. I will use an example. We	11:45:31	11 matter of does that work for you and if it doesn't	11:48:56
12 forecast our needs and our inventory team	11:45:39	12 then you negotiate from there.	11:49:00
13 specifically says, "We are going to need this	11:45:44	13 Q Did Circuit City request quotes from the	11:49:01
14 amount of product over a period of time," and so	11:45:46	14 vendors for product costs?	11:49:05
15 we would transfer that data to the vendor saying,	11:45:50	15 MR. LAHAD: Objection, vague.	11:49:08
16 "This is what our forecasted needs are," and most	11:45:54	16 THE WITNESS: Every time an assortment	11:49:10
17 cases we also showed them what our sales were.	11:45:58	17 was announced, there would generally be some	11:49:12
18 That data, since the U.S. company is a	11:46:02	18 sort of communication, "If this is what the	11:49:19
19 sales company they have to share that data with	11:46:09	19 product would cost for you?"	11:49:23
20 their manufacturing divisions.	11:46:13	20 BY MS. LIN:	11:49:24
21 Q Did Circuit City's employees to your	11:46:25	21 Q Typically, CRT finished product costs	11:49:25
22 knowledge ever take part in those discussions with	11:46:29	22 would initially be quoted by the vendor to Circuit	11:49:27
23 the manufacturers above the U.S. sales entities?	11:46:35	23 City?	11:49:30
24 MR. LAHAD: Objection, vague.	11:46:42	24 A Right, that would be the beginning of	11:49:30
25 THE WITNESS: Yes, I am not --	11:46:43	25 negotiations.	11:49:32
Page 43		Page 45	
1 BY MR. GRALEWSKI:	11:46:46	1 Q Did Circuit City ever employ an auction	11:49:34
2 Q Would Circuit City's buyers ever have	11:46:47	2 process in purchasing its CRT finished products?	11:49:37
3 contact with any vendors apart from the sales	11:46:50	3 A Yes.	11:49:39
4 entities located in the United States?	11:46:53	4 Q How did that auction process work?	11:49:40
5 A Yes.	11:46:55	5 A It's called a reverse auction and	11:49:42
6 Q In what capacity would that happen?	11:46:57	6 basically you put everybody on line at the same	11:49:46
7 A Seeing new product lineups and learning	11:47:01	7 time.	11:49:51
8 about the feature, learning about the new product	11:47:11	8 You say that you are looking for a very	11:49:52
9 primarily.	11:47:13	9 very specific product. Auctions were only used to	11:49:55
10 Q Would purchase negotiations ever be	11:47:14	10 my knowledge for what we would refer to as	11:50:00
11 conducted between Circuit City and an entity other	11:47:16	11 unbranded product, meaning, that it was not a	11:50:07
12 than a U.S. based sales entity of a vendor?	11:47:20	12 major demand brand, but it could be a secondary	11:50:10
13 A No, it's not	11:47:23	13 type of brand.	11:50:15
14 Q Was there a process that Circuit City	11:47:23	14 But the specifics would be, "We've got	11:50:19
15 used in negotiating prices for its purchases of	11:47:43	15 to have a 13 inch and it has got to have the	11:50:24
16 CRT finished products?	11:47:46	16 antenna with it and all of those sort of things,	11:50:28
17 A We did not negotiate prices. When I	11:47:49	17 you get a level playing field so that everybody is	11:50:30
18 refer to price, I refer to price as being what we	11:47:53	18 quoting the same feature set, and then I was not	11:50:33
19 sell it at.	11:47:57	19 directly involved in one.	11:50:39
20 Q I'm sorry. What term would you use to	11:47:58	20 But the process is that everybody goes	11:50:43
21 discuss that? Would it be cost?	11:48:02	21 out live with the computer feeds, and sees that	11:50:46
22 A Cost.	11:48:03	22 someone has bid lower, and they can choose to	11:50:53
23 Q So the cost in this context would be	11:48:05	23 react or not.	11:50:57
24 from the vendor to Circuit City to acquire the CRT	11:48:08	24 They do not know who it is.	11:50:58
25 finished product?	11:48:11	25 It is blind from that viewpoint, but	11:51:01

12 (Pages 42 - 45)

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Our parties were
sometimes part
of the negotiations

Page 46		Page 48
1 they are basically bidding, and in these cases you 11:51:03		1 Q Did Circuit City use its reverse auction 11:54:16
2 would say it is a set amount of product. "We want 11:51:06		2 process throughout the relevant period? 11:54:22
3 to buy 10,000." 11:51:12		3 A No. 11:54:24
4 It was not part of our normal assortment 11:51:16		4 Q What years was the reverse auction 11:54:24
5 in most cases. There could have been some cases. 11:51:22		5 process used for CRT finished products? 11:54:26
6 Q In Circuit City's reverse auction 11:51:29		6 A The process was brought to us by a head 11:54:29
7 process the bidder offering the lowest price for 11:51:33		7 merchant that we had gotten from Target and he was 11:54:35
8 the product would typically win? 11:51:35		8 with us for -- what I am looking at is my history, 11:54:39
9 A Yes. 11:51:38		9 because I moved, my buying changed about right 11:54:52
10 Q Do you know why the auction process was 11:51:39		10 after he came in. 11:55:05
11 not used for branded products? 11:51:39		11 So somewhere in 2002, to about 2004, he 11:55:06
12 A Again, because you have a specific value 11:51:43		12 was the champion of the reverse auction process 11:55:12
13 of that brand -- I said almost -- it was always 11:51:49		13 and that was when it was used the most to my 11:55:15
14 used for opening price point because that's where 11:51:56		14 knowledge. 11:55:18
15 cost actually has the biggest factor, meaning, 11:52:02		15 Q Do you know what the employee's name is? 11:55:19
16 that it would have the least amount of features 11:52:05		16 A I knew that you were going to ask me, 11:55:22
17 and the customer's primary demand for purchasing 11:52:08		17 but I cannot remember. 11:55:23
18 that product is driven by the fact that it is 11:52:12		18 Q If it comes back to you at any point 11:55:25
19 retail price, whereas, all the other factors ... 11:52:16		19 today, please speak up. 11:55:28
20 (witness did not complete his answer.) 11:52:21		20 A Yes. 11:55:29
21 Q For the unbranded products, Circuit City 11:52:24		21 Q In the reverse auction process, did 11:55:31
22 considered price to be the biggest factor used by 11:52:26		22 Circuit City set all of the terms for the product 11:55:34
23 the customer in purchasing those products? 11:52:29		23 purchase except for the price point? 11:55:37
24 MR. LAHAD: Objection, misstates the 11:52:32		24 A Yes. 11:55:38
25 testimony. 11:52:33		25 MR. LAHAD: Objection, vague. 11:55:39
Page 47		Page 49
1 THE WITNESS: For the opening price 11:52:33		1 THE WITNESS: To my knowledge we set as 11:55:41
2 point product, cost was much more of a factor 11:52:37		2 many things as we possibly could so that 11:55:43
3 than in some other decisions. 11:52:43		3 everything was backed down to the cost at 11:55:46
4 BY MS. LIN: 11:52:46		4 that point. Again, if I might add, we did 11:55:51
5 Q When you say "opening price point 11:52:47		5 not do this a lot. 11:55:57
6 product," what does that mean? 11:52:48		6 BY MS. LIN: 11:55:58
7 A That means the lowest price retail 11:52:49		7 Q Outside of the auction process, when 11:56:00
8 product within a group of like product, so for 11:52:56		8 Circuit City was negotiating for CRT finished 11:56:03
9 example, a 13-inch CRT product may start as low as 11:53:01		9 product purchases, were negotiations primarily 11:56:07
10 \$99, it might go to \$400, the \$99 is your opening 11:53:08		10 focused on prices? 11:56:10
11 price point. 11:53:15		11 A No, primarily, again, is a relevant 11:56:12
12 Q Did the price of Circuit City's opening 11:53:17		12 term, but there are so many factors that cost is 11:56:17
13 price point products affect the price that Circuit 11:53:21		13 certainly one of them. 11:56:24
14 City would sell its other products in that same 11:53:24		14 MR. LAHAD: Your question said prices 11:56:28
15 category at? 11:53:27		15 and he said costs. Are you asking about 11:56:28
16 A I don't believe so. 11:53:30		16 prices or cost? 11:56:31
17 Q Was an unbranded product always the 11:53:37		17 MS. LIN: I am sorry, I am asking about 11:56:32
18 opening point price product? 11:53:45		18 costs. 11:56:33
19 A No. 11:53:48		19 MR. LAHAD: Then maybe you want to 11:56:34
20 Q Are there specific CRT finished product 11:53:49		20 reboot that just for the cleanliness of the 11:56:35
21 manufacturers that also sold opening point price 11:53:53		21 record. 11:56:37
22 products? 11:53:58		22 BY MS. LIN: 11:56:37
23 A That changed over a period of time. For 11:53:59		23 Q Apart from the auction process when 11:56:38
24 example, when I was doing the combination product 11:54:03		24 Circuit City was negotiating for CRT finished 11:56:41
25 Magnavox was selling opening point product. 11:54:09		25 product costs, were costs the primary factor at 11:56:44

13 (Pages 46 - 49)

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212-267-6868

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516-608-2400

Page 50		Page 52	
1 issue in those negotiations? 11:56:47		1 favorable to Circuit City? 11:58:41	
2 MR. GRALEWSKI: Objection, form. 11:56:49		2 A Yes. 11:58:43	
3 THE WITNESS: No, demand was. 11:56:51		3 Q In some instances could Circuit City be 11:58:44	
4 BY MS. LIN: 11:56:55		4 willing to pay a higher cost for CRT finished 11:58:46	
5 Q Circuit City's ability to meet its 11:56:55		5 products in exchange for a longer payment term? 11:58:48	
6 demand to purchase a quantity of CRT finished 11:57:03		6 A I did not personally experience that, 11:58:53	
7 products was its driving factor in purchase 11:57:05		7 but theoretically. 11:58:59	
8 negotiations? 11:57:09		8 Q You also mentioned, I believe, market 11:59:04	
9 MR. LAHAD: Objection, misstates the 11:57:10		9 development funds, is that right? 11:59:08	
10 testimony. 11:57:12		10 A Yes. 11:59:09	
11 THE WITNESS: No, the customer demand. 11:57:12		11 Q What were those? 11:59:10	
12 The goal was to sell the product, so your 11:57:18		12 A Market development funds are funds that 11:59:11	
13 primary motivation and your primary factor is 11:57:23		13 are provided to develop a market for the product, 11:59:15	
14 always demand, how many customers are looking 11:57:25		14 otherwise help you sell the product, and the 11:59:20	
15 for this product and want to buy this 11:57:28		15 things that might help you sell the product 11:59:24	
16 product. 11:57:30		16 include training. 11:59:26	
17 BY MS. LIN: 11:57:30		17 It might include the way the product is 11:59:28	
18 Q When Circuit City was negotiating the 11:57:32		18 displayed and most often it included how 11:59:31	
19 terms of its CRT product purchases which terms 11:57:35		19 frequently and how the product was advertised. 11:59:38	
20 were up for negotiation with the CRT finished 11:57:39		20 Q For each of those instances training, 11:59:44	
21 product vendors? 11:57:43		21 display, and advertising the vendor would provide 11:59:46	
22 A Which terms? 11:57:44		22 money to Circuit City to do those things? 11:59:49	
23 Q Yes. 11:57:46		23 A They may. 11:59:52	
24 MR. GRALEWSKI: Objection, form. 11:57:47		24 Q In negotiating the purchase of CRT 11:59:55	
25 BY MS. LIN: 11:57:49		25 finished products, would Circuit City ever accept 11:59:58	
Page 51		Page 53	
1 Q For instance, you negotiated costs with 11:57:49		1 a higher cost in exchange for additional vendor 12:00:01	
2 you being Circuit City negotiated cost with CRT 11:57:52		2 funds? 12:00:05	
3 finished product vendors, correct? 11:57:55		3 MR. LAHAD: Objection, vague. 12:00:09	
4 A Correct. 11:57:57		4 THE WITNESS: I can only answer that 12:00:10	
5 MR. GRALEWSKI: Objection. 11:57:58		5 question when talking process. Process wise, 12:00:12	
6 BY MS. LIN: 11:57:59		6 we were taught to buy the product and 12:00:16	
7 Q Were there other things in addition to 11:58:00		7 negotiate the cost of the product, and once 12:00:19	
8 costs that were typically negotiated with CRT 11:58:01		8 we finished with that, then to have 12:00:22	
9 finished product vendors? 11:58:04		9 discussions about market development funds as 12:00:25	
10 A Yes. 11:58:05		10 a separate conversation. 12:00:29	
11 MR. GRALEWSKI: Same objection. 11:58:06		11 BY MS. LIN: 12:00:30	
12 BY MS. LIN: 11:58:07		12 Q Did Circuit City have any type of 12:00:36	
13 Q What else was under negotiation in 11:58:07		13 leverage to obtain market development funds? 12:00:39	
14 addition to costs? 11:58:10		14 MR. LAHAD: Objection, vague. 12:00:42	
15 MR. GRALEWSKI: Objection. 11:58:11		15 MR. GRALEWSKI: Can we have the same 12:00:45	
16 THE WITNESS: You may have payment terms 11:58:13		16 agreement in this deposition that an 12:00:47	
17 and you might also negotiate market 11:58:16		17 objection by one is an objection by all? 12:00:50	
18 development funds. 11:58:22		18 MS. LIN: An objection by all 12:00:54	
19 BY MS. LIN: 11:58:23		19 plaintiffs, yes. 12:00:55	
20 Q When you say payment terms, what does 11:58:24		20 MR. GRALEWSKI: Thank you. 12:00:57	
21 that mean? 11:58:26		21 THE WITNESS: Could you restate the 12:00:59	
22 A That means whether they are paid in 30 11:58:27		22 question. 12:01:00	
23 days or they are due in 30 days or 60 days or 90 11:58:30		23 BY MS. LIN: 12:01:00	
24 days, for example. 11:58:34		24 Q Sure, so for instance, once Circuit City 12:01:01	
25 Q Would a long payment term be more 11:58:38		25 had agreed on a cost term of a CRT finished 12:01:04	

14 (Pages 50 - 53)

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

	Page 54	Page 55	
1 product purchase, what could be used to persuade a vendor to also provide additional market development funds?	12:01:08 12:01:11 12:01:14 12:01:15 12:01:18 12:01:22 12:01:24 12:01:29 12:01:31 12:01:35 12:01:38 12:01:41 12:01:47 12:01:49 12:01:51 12:01:54 12:01:56 12:01:57 12:01:57 12:01:59 12:02:02 12:02:04 12:02:06 12:02:08 12:02:10		
1 A Primarily our visibility in the marketplace because we were one of the largest advertisers in the United States.	12:01:18 12:01:22 12:01:24 12:01:29 12:01:31 12:01:35 12:01:38 12:01:41 12:01:47 12:01:49 12:01:51 12:01:54 12:01:56 12:01:57 12:01:57 12:01:59 12:02:02 12:02:04 12:02:06 12:02:08 12:02:10		
1 Also the fact that we had 600 something stores where their product would be available to be seen by the consumer.	12:01:24 12:01:29 12:01:31 12:01:35 12:01:38 12:01:41 12:01:47 12:01:49 12:01:51 12:01:54 12:01:56 12:01:57 12:01:57 12:01:59 12:02:02 12:02:04 12:02:06 12:02:08 12:02:10		
1 The fact that we presented an opportunity for the product to be seen and heard and learned about was our leverage otherwise we had the ability to sell the product.	12:01:35 12:01:38 12:01:41 12:01:47 12:01:49 12:01:51 12:01:54 12:01:56 12:01:57 12:01:57 12:01:59 12:02:02 12:02:04 12:02:06 12:02:08 12:02:10		
1 Q That gave you negotiating power with the CRT finished product vendors?	12:01:49 12:01:51		
16 MR. LAHAD: Objection, missates testimony.	12:01:54		
18 BY MS. LIN:	12:01:57		
19 Q Circuit City strength in the market improved Circuit City's negotiating position with CRT finished product manufacturers?	12:01:57 12:01:59 12:02:02		
22 MR. LAHAD: Same objection.	12:02:04		
23 THE WITNESS: I don't know whether it did in the way that you are asking the question.	12:02:06 12:02:08 12:02:10		
25			
1 In some cases the reverse would happen and the vendor doesn't want their product in that many stores. They would rather have it in a few elite stores, so I can't say that we got cost based on that or that we had a leverage based on that.	12:02:14 12:02:18 12:02:21 12:02:24 12:02:32 12:02:36 12:02:37		
7 BY MS. LIN:	12:02:40		
8 Q Would Circuit City purchase CRT finished products for the company as a whole versus purchasing for specific stores?	12:02:43 12:02:48		
11 A We bought for the company as a whole and then decided how many stores we would put it in.	12:02:51 12:02:55		
13 Q Did the CRT finished product manufacturer that Circuit City purchased from have any role in deciding which Circuit City Stores its product would end up in?	12:02:58 12:03:01 12:03:04		
17 A To the degree of supply, if they said, "We are going to be able to supply more than 100 stores," then we wouldn't program more than 100 stores.	12:03:09 12:03:13 12:03:17 12:03:21		
21 But as far as choosing the specific stores, that would have been a highly unusual conversation and not one that I was party to.	12:03:22 12:03:25 12:03:32		
24 MR. LAHAD: Is now a good time to break for lunch?	12:03:36 12:03:36		
1 MS. LIN: Yes, now would be a great time to take a break.	12:03:37		
3 THE VIDEOGRAPHER: The time is approximately 12:03 p.m. We are off the record.	12:03:38 12:03:39 12:03:42		
6 AFTERNOON SESSION	12:03:42		
7 (12:42 p.m.)	12:03:42		
8 THE VIDEOGRAPHER: The time is 12:42 p.m. We are back on the record.	12:42:44 12:42:46		
10 MS. LIN: Thank you, Mr. Deason.	12:42:49		
11 BY MS. LIN:	12:42:50		
12 Q Do you understand that you are still under oath?	12:42:50 12:42:51		
14 A Yes.	12:42:51		
15 Q To your knowledge, did Circuit City ever purchase CRT finished products from a Hitachi related entity during the relevant period?	12:42:52 12:42:56 12:42:58		
18 A I don't know whether we bought CRT product from Hitachi. I know we were doing business with Hitachi Television during the period.	12:43:00 12:43:03 12:43:06 12:43:07		
22 Q Do you know if Circuit City bought any CRT finished products from LG Electronics during the relevant period?	12:43:09 12:43:11 12:43:16		
25 A Again, I cannot specifically say without	12:43:17		
1 looking at the reports, so I will just stop it there.	12:43:20 12:43:23		
3 Q What about Panasonic?	12:43:24		
4 A Panasonic because I bought a Panasonic television, I know we sold them, yes.	12:43:27 12:43:30		
6 Q Do you know which CRT finished products from Panasonic Circuit City sold?	12:43:32 12:43:35		
8 A I do not know all the specifics.	12:43:38		
9 Q What about Phillips? Phillips related entities?	12:43:39 12:43:44		
11 A Again, I would not know the specifics.	12:43:45		
12 Q Would that be true for any number of manufacturers I might list?	12:43:47 12:43:50		
14 A Yes.	12:43:51		
15 Q Do you know how many CRT finished products in any particular size category that Circuit City would sell at one time?	12:43:52 12:43:55 12:44:00		
18 A No.	12:44:01		
19 Q We discussed before lunch how there would be high value products and low value products within the same size category of CRT finished products, do you remember that?	12:44:02 12:44:07 12:44:12 12:44:16		
23 A Yes.	12:44:17		
24 Q Was there any time during the relevant period when Circuit City ceased to carry low-end	12:44:17 12:44:19		

15 (Pages 54 - 57)

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

Page 58	Page 60
1 CRT products? 12:44:22	1 A I looked at that question on the 12:47:14
2 MR. LAHAD: Objection, vague. 12:44:26	2 deposition and we visited factories, so it is 12:47:17
3 THE WITNESS: I do not know. 12:44:27	3 possible or probable that a buyer was in a factory 12:47:23
4 BY MS. LIN: 12:44:28	4 and saw a product that we bought actually either 12:47:29
5 Q Was the range of CRT finished products 12:44:28	5 making a picture tube or something like that. 12:47:34
6 at Circuit City sold reduced towards the end of 12:44:34	6 I did not have specific knowledge of 12:47:37
7 the relevant period? 12:44:38	7 doing it, I never did that. 12:47:39
8 A Again, I wouldn't have specific 12:44:40	8 Q Would there be a way now for someone to 12:47:42
9 knowledge, but the fact that their LCD product was 12:44:43	9 determine which entity manufactured a CRT within a 12:47:47
10 introduced, it is possible. 12:44:48	10 CRT finished product sold by Circuit City? 12:47:51
11 Q We discussed combo products this 12:44:53	11 A Not with Circuit City. 12:47:53
12 morning. Were there any combo CRT finished 12:44:57	12 MR. GRALEWSKI: Objection, form. 12:47:55
13 products that were monitors sold by Circuit City? 12:45:00	13 THE WITNESS: Not from Circuit City's 12:47:58
14 A My definition of a combo product was the 12:45:06	14 viewpoint. I would assume the vendor could 12:48:01
15 television product with either a DVD or a VCR in 12:45:09	15 provide that information but we could not. 12:48:05
16 it, so based on that definition the answer is no. 12:45:13	16 BY MS. LIN: 12:48:07
17 Q Did Circuit City sell any computers that 12:45:16	17 Q Did Circuit City know whether the CRTs 12:48:09
18 contained a CRT finished product and the computer 12:45:19	18 contained in the CRT finished products it 12:48:13
19 itself within the same piece? 12:45:22	19 purchased were manufactured in the United States? 12:48:15
20 MR. LAHAD: Objection, vague. 12:45:26	20 A They may have known. I am not sure we 12:48:20
21 THE WITNESS: I don't know. 12:45:27	21 cared. 12:48:24
22 BY MS. LIN: 12:45:28	22 Q Does Circuit City know at the present 12:48:26
23 Q When we were discussing CRT finished 12:45:29	23 where the CRTs contained in the CRT finished 12:48:28
24 products, that would be at a low or a high end of 12:45:39	24 products that sold were manufactured? 12:48:30
25 a continuum within the same product category, were 12:45:43	25 A I don't understand the question. 12:48:34
Page 59	Page 61
1 there certain factors that made products fall at 12:45:47	1 Q You said Circuit City might have known 12:48:36
2 the higher end of that price category? 12:45:50	2 at some point in time where a CRT within a CRT 12:48:38
3 A If they were more full featured, then 12:45:52	3 finished product had been manufactured. Is that 12:48:41
4 they would be in the higher end, and if they were 12:45:55	4 something that anyone with the company would still 12:48:43
5 a basic less featured product, would be in the 12:45:57	5 know? 12:48:46
6 lower end. 12:46:00	6 MR. LAHAD: Are you talking about the 12:48:46
7 Q Were there certain brands that tended to 12:46:03	7 Trust? 12:48:48
8 be at one end or another? 12:46:05	8 MS. LIN: Yes. 12:48:48
9 A Yes. 12:46:08	9 THE WITNESS: Again, it would have to be 12:48:49
10 Q Which brands fell at the high end of CRT 12:46:12	10 a one on one type of experience where a buyer 12:48:55
11 finished product price points? 12:46:17	11 who went over to see LG and Samsung which we 12:48:58
12 A Most of your -- again, consumer 12:46:20	12 did a couple of times a year go over and see 12:49:05
13 recognized brands like Panasonic, Sony, Samsung 12:46:23	13 the product, if they happened to see a 12:49:08
14 might have been at the higher end and the brands 12:46:31	14 manufacturing facility, then they would do 12:49:12
15 that maybe were less recognized by consumers would 12:46:34	15 it, but it wouldn't have been, again, there 12:49:14
16 be at the lower end and that could change over a 12:46:38	16 was no need for us to know where the product, 12:49:19
17 period of time because at one point Samsung was 12:46:42	17 where the CRT was manufactured. 12:49:23
18 primarily at the opening price points, and over 12:46:46	18 BY MS. LIN: 12:49:25
19 the period that we're talking about they changed 12:46:50	19 Q Was the identity of the entity making 12:49:28
20 from being opening to being more of a premium 12:46:53	20 the CRT ever considered by Circuit City as part of 12:49:32
21 product. 12:46:56	21 the finished product purchasing decisions? 12:49:36
22 Q During the time that Circuit City was 12:47:00	22 A I wouldn't think so. 12:49:39
23 purchasing CRT finished products, did Circuit City 12:47:02	23 Q Do you know for the CRT finished 12:49:40
24 ever know the entity that manufactured CRT within 12:47:05	24 products that Circuit City purchased what 12:49:48
25 the finished product? 12:47:10	25 percentage of the purchase price was attributable 12:49:50

16 (Pages 58 - 61)

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

	Page 62		Page 64
1 to the cost of that CRT?	12:49:54	1 for everything. It is not, but there were	12:52:00
2 A No.	12:49:55	2 times when I was able to.	12:52:02
3 Q Would there be a way for Circuit City to	12:49:56	3 BY MS. LIN:	12:52:06
4 determine that information?	12:49:59	4 Q Are there specific circumstances that	12:52:06
5 A No.	12:50:00	5 you are aware of in which Circuit City was not	12:52:14
6 MR. GRALEWSKI: Objection, form.	12:50:02	6 able to negotiate more favorable cost terms for	12:52:16
7 BY MS. LIN:	12:50:03	7 its CRT finished product purchases?	12:52:19
8 Q You testified before lunch that	12:50:09	8 A Again, I would have to refer to my own	12:52:26
9 typically in a cost negotiation with a vendor	12:50:11	9 experience and there were occasions where the	12:52:29
10 regarding a CRT finished product that typically a	12:50:16	10 price quoted was the lowest price that I was able	12:52:32
11 vendor would be the first to throw out a cost	12:50:18	11 to buy the product for.	12:52:36
12 term, do you recall that testimony?	12:50:22	12 Q Did Circuit City have any recourse if a	12:52:39
13 A Yes.	12:50:23	13 vendor could not come down in price for a CRT	12:52:42
14 Q Was Circuit City typically able to	12:50:24	14 finished product that CRT wanted to purchase?	12:52:46
15 negotiate more favorable cost terms than those	12:50:26	15 MR. LAHAD: Vague.	12:52:48
16 starting cost terms provided by a CRT finished	12:50:29	16 MR. GRALEWSKI: Objection, form.	12:52:50
17 product vendor?	12:50:31	17 THE WITNESS: Again, using the term	12:52:52
18 MR. LAHAD: Vague.	12:50:34	18 cost, if the cost was not to our liking we	12:52:56
19 MR. GRALEWSKI: Objection, form.	12:50:36	19 might not buy the product, but in a lot of	12:53:06
20 THE WITNESS: Reask the question,	12:50:38	20 cases we might buy the product anyhow.	12:53:10
21 please.	12:50:42	21 BY MS. LIN:	12:53:13
22 BY MS. LIN:	12:50:49	22 Q Would Circuit City ever withdraw its	12:53:14
23 Q Was Circuit City ever able to negotiate	12:50:49	23 advertising support for a CRT finished product if	12:53:18
24 more favorable cost terms than the starting cost	12:50:52	24 a CRT finished product manufacturer did not reduce	12:53:20
25 terms provided by a CRT finished product vendor?	12:50:55	25 its cost?	12:53:24
	Page 63		Page 65
1 A Yes.	12:50:59	1 MR. LAHAD: Objection, lacks foundation.	12:53:25
2 Q How frequently could Circuit City	12:50:59	2 THE WITNESS: I don't know. It doesn't	12:53:35
3 negotiate more favorable cost terms with a CRT	12:51:02	3 sound reasonable.	12:53:42
4 finished product vendor?	12:51:05	4 BY MS. LIN:	12:53:43
5 A I could not tell you in any sort of	12:51:06	5 Q Would Circuit City ever reduce the	12:53:44
6 meaningful way.	12:51:08	6 volume of CRT finished products that it intended	12:53:57
7 Q Based on your experience as a buyer of	12:51:10	7 to purchase if a CRT finished product vendor would	12:54:00
8 CRT finished products, were you able to	12:51:13	8 not meet Circuit City's requested price? Strike	12:54:03
9 successfully negotiate lower products with CRT	12:51:17	9 that.	12:54:05
10 finished product manufacturers?	12:51:19	10 Would Circuit City ever reduce the	12:54:05
11 MR. LAHAD: You said lower products?	12:51:22	11 volume of CRT finished products that it intended	12:54:05
12 MS. LIN: Lower costs.	12:51:25	12 to purchase if a vendor would not meet Circuit	12:54:05
13 MR. LAHAD: Why don't you reboot that,	12:51:26	13 City's requested costs?	12:54:05
14 for the record.	12:51:27	14 A If we chose to stop buying the product,	12:54:06
15 MR. GRALEWSKI: Objection, form, outside	12:51:28	15 then that is a reduction and we do make that	12:54:09
16 the scope.	12:51:30	16 decision at times.	12:54:13
17 BY MS. LIN:	12:51:33	17 Q Did Circuit City have any overall	12:54:20
18 Q Based on your experience as a buyer of	12:51:33	18 negotiating strategy with respect to trying to	12:54:23
19 CRT finished products, were you able to	12:51:37	19 reduce CRT finished product costs?	12:54:26
20 successfully negotiate lower costs with the CRT	12:51:39	20 MR. LAHAD: Vague.	12:54:29
21 finished product vendors?	12:51:42	21 THE WITNESS: I don't know what you mean	12:54:30
22 MR. GRALEWSKI: Same objection.	12:51:45	22 as far as an overall strategy.	12:54:33
23 THE WITNESS: The answer is, yes, not in	12:51:47	23 BY MS. LIN:	12:54:34
24 all cases, but the way you asked the question	12:51:55	24 Q Were buyers trained in any specific	12:54:36
25 it sounds like you want me to say that it is	12:51:58	25 specific tactics they could use to try to	12:54:40

17 (Pages 62 - 65)

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

Page 66		Page 68			
1	negotiate lower cost of CRT finished products?	12:54:41	1	MR. LAHAD: Misstates the testimony.	12:57:12
2	MR. LAHAD: Trained by Circuit City?	12:54:47	2	THE WITNESS: Yes.	12:57:13
3	MS. LIN: (Counsel motions.)	12:54:50	3	BY MS. LIN:	12:57:14
4	MR. LAHAD: For the record, she nodded	12:54:50	4	Q Did Circuit City have any written	12:57:15
5	yes.	12:54:51	5	guidelines related to how costs would be	12:57:20
6	THE WITNESS: We had basic negotiation	12:54:53	6	negotiated with CRT finished product vendors?	12:57:23
7	training just for all purposes, whether	12:54:58	7	A No.	12:57:25
8	managing people or buying, we had that type	12:55:05	8	Q Did Circuit City have any unwritten	12:57:26
9	of training at various times during my tenure	12:55:09	9	guidelines regarding how costs would be negotiated	12:57:29
10	with the company and during this period of	12:55:12	10	with CRT finished product vendors?	12:57:31
11	time.	12:55:15	11	MR. LAHAD: Vague.	12:57:34
12	As far as a specific, "This is the way	12:55:16	12	THE WITNESS: That is what I would ask	12:57:35
13	you are to negotiate with a vendor," there	12:55:21	13	is, I am not sure what you mean.	12:57:37
14	was no such training.	12:55:23	14	(Whereupon, Deposition Exhibit 2835 is marked for	12:57:40
15	BY MS. LIN:	12:55:27	15	Identification.)	12:57:40
16	Q If one CRT finished product vendor	12:55:27	16	MS. LIN: I am going to hand the witness	12:58:03
17	decreased its prices, would Circuit City ever use	12:55:37	17	a document marked as Exhibit 2835, and the	12:58:03
18	that price decrease to try to negotiate lower	12:55:40	18	document is Bates stamped CC0572597.	12:58:06
19	prices for CRT finished products from its other	12:55:43	19	BY MS. LIN:	12:58:17
20	vendors?	12:55:46	20	Q Are you familiar with any of the people	12:58:18
21	MR. LAHAD: You are using price again.	12:55:47	21	in Exhibit 2835?	12:58:40
22	Did you mean cost?	12:55:48	22	A Yes.	12:58:42
23	MS. LIN: I am sorry. Let me reask	12:55:49	23	Q Who are you familiar with?	12:58:43
24	that.	12:55:52	24	A I know Jay Nimechick, I know Danny	12:58:46
25	BY MS. LIN:	12:55:52	25	Caglin, and I know Paul Burgess.	12:58:48
Page 67		Page 69			
1	Q If one CRT finished product vendor	12:55:52	1	Q Who is Jay Nimechick?	12:58:53
2	decreased its cost to Circuit City for a CRT	12:55:54	2	A At this point he is the national account	12:58:56
3	finished product, would Circuit City ever use that	12:55:58	3	manager for LG Zenith Electronics USA.	12:58:59
4	cost decrease to try to negotiate lower costs with	12:56:01	4	Q Who is Danny Cagwin?	12:59:03
5	its other CRT finished product vendors?	12:56:03	5	A Danny Cagwin was a buyer for Circuit	12:59:04
6	MR. GRALEWSKI: Objection, form.	12:56:07	6	City Stores.	12:59:08
7	THE WITNESS: In general we would not	12:56:10	7	Q And who is Paul Burgess?	12:59:09
8	discuss -- we had non-disclosure ^{forms} forms	12:56:12	8	A According to this, Paul at this time is	12:59:12
9	agreements and so we would not discuss	12:56:16	9	working for LG USA and that is all I can tell from	12:59:15
10	specifics on what other vendors were doing	12:56:20	10	this.	12:59:19
11	that was not public.	12:56:23	11	Q Looking at the last email in the chain,	12:59:22
12	So if another product has repositioned	12:56:27	12	so starting at the bottom of page 1 through the	12:59:44
13	its manufacturer suggested retail price, not	12:56:32	13	top of page 2, reading this email through, does it	12:59:44
14	its costs, but its suggested retail price,	12:56:36	14	appear to you that LG Electronics has agreed to	12:59:45
15	we did, could, and would use that	12:56:38	15	reduce its costs of a CRT finished product in	12:59:49
16	information to have discussions about the	12:56:44	16	response to a request from Circuit City?	12:59:52
17	manufacturer's suggested retail price and	12:56:49	17	MR. LAHAD: Objection, calls for	12:59:54
18	therefore the cost of other product.	12:56:50	18	speculation, the document speaks for itself.	12:59:55
19	BY MS. LIN:	12:56:55	19	MR. GRALEWSKI: Objection, form.	12:59:59
20	Q So Circuit City might use a public price	12:56:56	20	THE WITNESS: Can you ask again, I am	13:00:02
21	to a consumer of one CRT finished product to	12:57:00	21	sorry.	13:00:04
22	negotiate a lower cost with another CRT finished	12:57:04	22	MS. LIN: Can the court reporter read	13:00:07
23	product vendor?	12:57:07	23	the question back?	13:00:07
24	MR. LAHAD: Objection.	12:57:09	24	(Whereupon, record was read.)	13:00:07
25	MR. GRALEWSKI: Objection, form.	12:57:10	25	MR. LAHAD: Same objections.	13:00:43

18 (Pages 66 - 69)

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

Page 70		Page 72	
1 THE WITNESS: Reading the email, it	13:00:45	1 want to.	13:03:35
2 appears that they have agreed to reduce the	13:00:50	2 You are really talking about whether the	13:03:38
3 costs, but there is also conversation about	13:00:57	3 product is viable in the marketplace as a	13:03:40
4 what I am assuming is manufactured suggested	13:01:02	4 standalone kind of a conversation.	13:03:46
5 retail pricing, and so it appears that they	13:01:06	5 Then once you decide whether it is	13:03:48
6 are having discussions about whether the	13:01:11	6 viable and it is going to sell, then you have	13:03:50
7 manufacturers suggested retail price is	13:01:13	7 discussions about what costs you have to have to	13:03:53
8 competitive.	13:01:16	8 be at that price.	13:03:56
9 How one relates to the other, I am not	13:01:20	9 Q When you have discussions about the	13:03:58
10 sure from this email.	13:01:23	10 costs, and you have to be at that price, were	13:04:00
11 BY MS. LIN:	13:01:25	11 those discussions internal to Circuit City or	13:04:03
12 Q Would Circuit City request that its CRT	13:01:25	12 between Circuit City and its vendors?	13:04:06
13 finished product manufacturers revise their	13:01:29	13 A Between Circuit City and its vendors.	13:04:07
14 suggested retail pricing on CRT finished products	13:01:33	14 Q Would Circuit City discuss its desired	13:04:10
15 to remain competitive with Circuit City's other	13:01:38	15 margin on a particular CRT finished product with	13:04:14
16 finished product vendors?	13:01:41	16 its CRT finished product vendors?	13:04:17
17 MR. LAHAD: Objection, vague.	13:01:43	17 MR. LAHAD: Vague.	13:04:20
18 MR. GRALEWSKI: Objection, form.	13:01:44	18 THE WITNESS: They discuss what the	13:04:22
19 THE WITNESS: We would have discussions	13:01:46	19 desired margin would be, and the difference,	13:04:24
20 about whether their manufacturer suggested	13:01:48	20 the margin that would be delivered at a	13:04:28
21 retail price was going to be a fact and in	13:01:50	21 manufacturer's suggested retail price,	13:04:29
22 those conversations we might say, "We don't	13:01:55	22 however that is not the price that Circuit	13:04:32
23 think this is competitive."	13:01:57	23 City generally was able to get in the sale of	13:04:35
24 BY MS. LIN:	13:01:58	24 product, so that was like the highest margin	13:04:41
25 Q Circuit City might say to a finished	13:02:01	25 you would be getting on the product, but	13:04:44
Page 71		Page 73	
1 product vendor that it's suggested pricing would	13:02:04	1 those discussions, yes, happened.	13:04:46
2 not be effective?	13:02:07	2 MS. LIN: Let's go take a break to	13:04:48
3 A That we don't think that that is a	13:02:08	3 change the tape.	13:04:49
4 competitive price. We can then choose to price it	13:02:10	4 THE VIDEOGRAPHER: The time is	13:04:51
5 however we wish to price it.	13:02:14	5 approximately 1:04 p.m. This is the end of	13:04:51
6 Q Would Circuit City in the context of	13:02:19	6 tape number one and we are off the record.	13:04:54
7 those negotiations request the CRT finished	13:02:22	7 (Whereupon, a break in the proceedings	13:04:57
8 product manufacturer reduce its cost to Circuit	13:02:27	8 commenced at 1:04 p.m. and on resuming	13:04:57
9 City for selling that product?	13:02:30	9 at 1:06 p.m.)	13:04:57
10 A If you're having a conversation about	13:02:36	10 THE VIDEOGRAPHER: The time is	13:06:10
11 whether a product is competitive or not, and	13:02:38	11 approximately 1:06 p.m. This is the	13:06:12
12 you're expecting the retail to be one price, but	13:02:45	12 beginning of tape number two. We are back on	13:06:15
13 it's going to be a different price, then yes, you	13:02:49	13 the record.	13:06:17
14 would expect that there would be an adjustment	13:02:52	14 BY MS. LIN:	13:06:17
15 cost to support a different price point.	13:02:55	15 Q Looking at the top of the second page of	13:06:19
16 Q In negotiating with its vendors to reach	13:03:00	16 Exhibit 2835, do you know what is meant to	13:06:23
17 a different price point, would Circuit City	13:03:02	17 benchmark the pricing of a product?	13:06:27
18 negotiate to maintain the margins that it expected	13:03:06	18 MR. LAHAD: Lack foundation, calls for	13:06:30
19 receive at the original price point?	13:03:08	19 speculation, the document speaks for itself.	13:06:31
20 A I would restate that our primary concern	13:03:12	20 THE WITNESS: Right, it wasn't a term	13:06:34
21 is the cost of the product and our secondary	13:03:17	21 that I used in my day-to-day business and my	13:06:39
22 concern is what we can sell it at and the	13:03:22	22 only read would be what I believe the word	13:06:43
23 manufacturer's suggested retail price definitely	13:03:25	23 benchmark means.	13:06:48
24 impacts our ability of what we can sell it at, but	13:03:28	24 BY MS. LIN:	13:06:49
25 we still have the right to sell it at any price we	13:03:32	25 Q Aside from Exhibit 2835, are you	13:06:49

19 (Pages 70 - 73)

VERITEXT REPORTING COMPANY

212-267-6868

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516-608-2400

Page 74		Page 76	
1 familiar with people at Circuit City using the term benchmark in reference to pricing?	13:06:53 13:06:56	1 speculation.	13:09:44 13:09:45
2 A I have not heard the term, but it is an adjective, I am sure that they did.	13:07:02 13:07:05	2 THE WITNESS: I can only speculate.	13:09:47 13:09:48
3 (Whereupon, Deposition Exhibit 2836 is marked for Identification.)	13:07:09	3 BY MS. LIN:	13:09:49 13:09:52
4 MS. LIN: I am going to mark document Bates Number CC 0567286 as Exhibit 2836.	13:07:18 13:07:20	4 Q Outside of the context of this exhibit, are you familiar with anyone talking about the covering of a model's price in the CRT finished product context?	13:09:48 13:09:56
5 BY MS. LIN:	13:07:29	5 A I am familiar with the term of we going to be covered in the changes that we have requested and that may be what this is in response to.	13:10:05 13:10:13 13:10:17
6 Q Are you familiar with any of the people in Exhibit 2836?	13:07:40 13:07:42	6 Q To the extent that you are familiar with the term of being covered in the changes that Circuit City requested, what would that mean?	13:10:24 13:10:26 13:10:28
7 A Yes.	13:07:45	7 A It could be anything that we requested from a vendor, if they said, "We have you covered," and that would imply that they are going to do what you have asked them to do.	13:10:31 13:10:34 13:10:37
8 Q Who are you familiar with?	13:07:45	8 Q Would you be covered to the extent of maintaining your margin that you originally negotiated on the product, is that what being covered means?	13:10:40 13:10:48 13:10:50 13:10:53
9 A Andy Mintz and David Dowdy.	13:07:47	9 MR. LAHAD: Objection, misstates the testimony.	13:10:55 13:10:57 13:10:58
10 Q I think you mentioned David Dowdy earlier. What was his position at Circuit City?	13:07:52 13:07:53	10 THE WITNESS: It would be whatever it	13:11:00
11 A He was a buyer.	13:07:56		
12 Q Of CRT finished products?	13:07:57		
13 A I know that he worked on the TV team, so I do not know specifically whether he bought CRT product.	13:07:59 13:08:04 13:08:07		
14 Q Who is Andy Mintz?	13:08:08		
15 A Andy Mintz worked for Phillips Corporation.	13:08:09 13:08:13		
16 Q I am directing your attention to the	13:08:17		
Page 75		Page 77	
1 middle of the first page in David Dowdy's email.	13:08:18	1 was that we had requested.	13:11:02
2 Do you see where it says, "If this model is impacted and you would need to raise the \$315 cost to offset any increase in duty we won't buy it?"	13:08:22 13:08:25 13:08:29	2 BY MS. LIN:	13:11:03
3 A Here you go. Yes.	13:08:35	3 Q How often did Circuit City's CRT finished product purchasing prices change?	13:11:21 13:11:24
4 Q In negotiating the purchase of a CRT finished product, was David Dowdy threatening not to buy the product if Phillips could not meet Circuit City's requested price?	13:08:46 13:08:54 13:09:00	4 MR. LAHAD: You said purchasing prices?	13:11:28
5 A MR. LAHAD: Lacks foundation, calls for speculation.	13:09:06 13:09:07	5 MS. LIN: Sorry, strike that.	13:11:30
6 Q THE WITNESS: He says, "I can get this model out of town for the same price. I won't pay anymore for it. The same thing goes for the 27-inch TV, so if you won't pay anything more for it what would he do?" I would assume that he would not buy it.	13:09:09 13:09:10 13:09:12 13:09:16 13:09:19 13:09:22	6 BY MS. LIN:	13:11:30
7 BY MS. LIN:	13:09:26	7 Q How often did Circuit City's CRT purchasing costs change?	13:11:31 13:11:34
8 Q At the top of the page, do you see where it says, "Andy Mintz says, 'I am sure you will be covered on both models'?"	13:09:28 13:09:30 13:09:32	8 A I don't know.	13:11:38
9 A Yes.	13:09:34	9 MR. GRALEWSKI: Objection.	13:11:39
10 Q Do you understand what it would mean to be covered on a model of a CRT finished product?	13:09:36 13:09:37	10 THE WITNESS: Yes, I don't know how to answer that question. There are lots of different products, so are you talking about a specific one product how often would its price change?	13:11:40 13:11:41 13:11:44 13:11:48 13:11:51
11 MR. LAHAD: Lack foundation, calls for	13:09:40	11 BY MS. LIN:	13:11:53
		12 Q How often would a particular CRT finished product cost Circuit City to change, would that be on a bi-annual basis like we were discussing before or might it have happened more frequently?	13:11:53 13:11:55 13:11:58 13:12:00
		13 A It could happen once --	13:12:02
		14 MR. GRALEWSKI: Objection.	13:12:04
		15 THE WITNESS: It can happen as little	13:12:05

20 (Pages 74 - 77)

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212-267-6868

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516-608-2400

	Page 78		Page 80
1 as -- I have bought products that had the 2 same costs two years in a row.	13:12:11 13:12:14	1 occasionally do have an increase in cost.	13:14:48 13:14:52
3 So it could happen that it didn't 4 change for a long period of time, but in 5 general those costs were sort of reviewed on 6 that semi-annual basis based on sales.	13:12:17 13:12:19 13:12:26 13:12:28	2 BY MS. LIN:	13:14:53 13:14:56
7 BY MS. LIN:	13:12:34	3 Q During the relevant period, did Circuit 4 City's costs for CRT finished products go down 5 more frequently than they went up?	13:15:00 13:15:05
8 Q Were Circuit City's prices for a CRT 9 finished product reviewed more frequently if other 10 vendors were changing their prices of CRT finished 11 products?	13:12:34 13:12:38 13:12:42 13:12:44	6 A I would speculate that they would over a 7 period of time and that consumer electronics in 8 general have one price at introduction when they 9 are not selling very many, and then over a period 10 of time when they are selling a lot more, the 11 costs go down to manufacture and then the costs 12 are transferred to Circuit City Stores.	13:15:11 13:15:16 13:15:19 13:15:21 13:15:23 13:15:28
12 MR. LAHAD: You said prices again.	13:12:47	13 The life cycle of CRT, I don't know the 14 specifics, my guess would be that they leveled 15 out, but again that is a guess.	13:15:33 13:15:39 13:15:45
13 MS. LIN: Sorry.	13:12:48	16 Q When you talk about a life cycle of CRT, 17 what does that mean?	13:15:48 13:15:50
14 MR. LAHAD: I just want to make sure we 15 are on the same page is why I am doing it.	13:12:51 13:12:51	18 A From television. When television was 19 invented to the time that people basically stopped 20 selling CRT product.	13:15:53 13:15:56 13:15:59
16 MS. LIN: No, I completely understand.	13:12:53	21 Q Was there a consistent life cycle of a 22 particular CRT finished product?	13:16:01 13:16:03
17 Strike that.	13:12:54	23 A Most individual SKUs or branded models 24 would be replaced on an annual basis. Sometimes 25 they would continue over, but for a specific	13:16:06 13:16:13 13:16:17
18 BY MS. LIN:	13:12:56		Page 79
19 Q Were Circuit City's costs for CRT 20 finished products ever negotiated more frequently 21 than bi-annually based on vendors of other CRT 22 finished products changing their costs to Circuit 23 City?	13:12:56 13:12:56 13:13:00 13:13:03 13:13:06	1 I changed its cost, would Circuit City then 2 typically renegotiate its cost on similar products 3 with other CRT finished product vendors?	13:13:13 13:13:17 13:13:20
24 A Yes.	13:13:06	4 A It depended on what kind of impact it 5 had. If the cost change was significant, and that 6 meant that you were going to change your retail 7 price, then you could have that discussion that 8 says, again, with public information, I am priced 9 on my floor every day at \$399 on your competitor, 10 and your product is \$449, so you're not selling 11 any, you would have those kind of discussions.	13:13:24 13:13:27 13:13:31 13:13:34 13:13:37 13:13:42 13:13:44 13:13:52
25 Q When one CRT finished product vendor	13:13:09	12 But the reverse of that could also 13 happen where you have got a lower cost and you are 14 now making more money and that is all you want to 15 do is make more money.	13:13:55 13:13:58 13:13:59 13:14:02
		16 Q Are you familiar with CRT finished 17 product costs to Circuit City ever going up?	13:14:06 13:14:07
		18 A Yea. Well, I can't say that it is a CRT 19 product that I have seen go up, but product prices 20 do go up occasionally.	13:14:12 13:14:20 13:14:27
		21 MR. LAHAD: Again, you used prices. Do 22 you mean prices or cost?	13:14:31 13:14:33
		23 THE WITNESS: Cost. Circuit City's cost 24 on a product, speaking specifically of CRT, I 25 do not know of a specific case, but products	13:14:34 13:14:37 13:14:44
			Page 81
		1 model, the typical life cycle was a year.	13:16:23
		2 Q Are you familiar with the term price 3 protection?	13:16:35 13:16:37
		4 A Yes.	13:16:37
		5 Q What is price protection?	13:16:38
		6 A Price protection is when the vendor 7 agrees to reduce the cost of your product and all 8 the product that you already own and it is usually 9 from a specific date.	13:16:41 13:16:47 13:16:52 13:16:58
		10 Q Did Circuit City negotiate price 11 protection as part of its CRT finished product 12 purchases?	13:17:04 13:17:07 13:17:11
		13 MR. LAHAD: Objection, vague.	13:17:12
		14 THE WITNESS: Circuit City requested 15 price protection when we built programs	13:17:13 13:17:20
		16 because without it Circuit City is at risk of 17 owning a whole lot of inventory that is not 18 valuable, so the short answer is yes.	13:17:26 13:17:31 13:17:35
		19 BY MS. LIN:	13:17:40
		20 Q When you say Circuit City built 21 programs, what does that mean?	13:17:41 13:17:42
		22 A That is our assortment. Another word 23 for assortment.	13:17:44 13:17:47
		24 Q Did Circuit City tend to have price 25 protection in place on all of its CRT finished	13:17:53 13:17:56

21 (Pages 78 - 81)

VERITEXT REPORTING COMPANY

212-267-6868

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516-608-2400

Page 82		Page 84	
1 product purchasing agreements?	13:17:59	1 "If I gave you that, what do you think	13:20:55
2 A No.	13:18:00	2 it is going to do?"	13:20:59
3 Q What would determine whether Circuit	13:18:01	3 And the buyer might say, "If you are	13:21:00
4 City had a price protection agreement with a CRT	13:18:03	4 going to do that, then I might advertise it."	13:21:02
5 finished product vendor?	13:18:06	5 He might say, "I think I can get the	13:21:07
6 A It was a negotiated process. Sometimes	13:18:09	6 sales up and not talk about anything else."	13:21:13
7 it would be in a master agreement. Sometimes it	13:18:15	7 But the whole idea is that during Point	13:21:17
8 would be in a specific deal letter for an item,	13:18:17	8 A to Point B, you have got more money to do	13:21:21
9 but over this time period my experience is that we	13:18:23	9 something that might help the sales.	13:21:24
10 got less and less price protection as a standard	13:18:28	10 The things that the buyer can do is he	13:21:27
11 rule of thumb and more sell through funding	13:18:32	11 can reduce the price on the floor. He can	13:21:29
12 instead.	13:18:37	12 advertise the product. He can tell the sales	13:21:32
13 Q Were there specific CRT finished product	13:18:42	13 people, "This is a product that we are going to	13:21:34
14 vendors that did not provide price protection?	13:18:45	14 have lots of and be sure to be aware of it or	13:21:37
15 A I am sure there were, but I do not know	13:18:48	15 train on it," but the two biggest levers are price	13:21:42
16 them.	13:18:51	16 and advertising.	13:21:48
17 Q Are there specific CRT finished product	13:18:51	17 Q Would sell through credits be	13:21:50
18 vendors to your knowledge that did provide price	13:18:54	18 implemented when a CRT finished product would be	13:21:52
19 protection consistently?	13:18:58	19 sold by Circuit City below the price at which	13:21:55
20 A Again, my personal experience for CRT	13:19:01	20 Circuit City originally intended to sell the	13:22:01
21 product was limited to the combos and it was my	13:19:04	21 product?	13:22:03
22 recollection that typically Magnavox provided	13:19:12	22 MR. LAHAD: Objection, lacks foundation.	13:22:04
23 price protection.	13:19:17	23 THE WITNESS: I am cautious about any	13:22:08
24 MR. LAHAD: You said Magnavox?	13:19:20	24 conversations about what we tend to sell. I	13:22:10
25 THE WITNESS: Magnavox, yes.	13:19:21	25 mean as a rule we typically sold product at	13:22:12
Page 83		Page 85	
1 BY MS. LIN:	13:19:21	1 manufacturer's suggested retail price.	13:22:17
2 Q You mentioned sell through credits.	13:19:22	2 If we had a sell through credit we may	13:22:22
3 What are sell through credits?	13:19:22	3 choose to sell below that to be able to sell	13:22:26
4 A Sell through credits. That is an amount	13:19:24	4 faster during that period of time.	13:22:31
5 of money provided to Circuit City based on the	13:19:27	5 BY MS. LIN:	13:22:33
6 sale of a specific product for a specific period	13:19:30	6 Q Were sell through credits typically	13:22:36
7 of time during a specific set of time.	13:19:33	7 implemented when a manufacturer's suggested retail	13:22:46
8 Q How would the amount of a sell through	13:19:37	8 price had been lowered?	13:22:48
9 credit be determined?	13:19:39	9 A Generally, if a manufacturer's suggested	13:22:51
10 A It would be determined by the vendor.	13:19:41	10 retail price has been lowered you're asking for	13:22:55
11 Q Would the amount of the sell through	13:19:52	11 price protection, but instead of price protection,	13:22:59
12 credit be tied to something?	13:19:54	12 you might get sell through credit for the	13:23:05
13 A The amount of it? I'm not sure I know	13:19:58	13 remaining inventory that you have for a period of	13:23:09
14 what you're asking.	13:20:06	14 time or something of that nature.	13:23:13
15 Q I'm not sure I am understanding you. In	13:20:06	15 Q Did Circuit City typically negotiate	13:23:19
16 setting a sell through credit, was that typically	13:20:11	16 sell through credits at the time it negotiated to	13:23:21
17 a percentage of a sale price or tied to a former	13:20:14	17 purchase the CRT products?	13:23:24
18 advertised price, how would that term come to be	13:20:18	18 A No.	13:23:27
19 agreed upon?	13:20:21	19 Q Was price protection typically	13:23:31
20 A It would be a discussion based on what	13:20:23	20 negotiated at the time you purchased the CRT	13:23:32
21 it would take to make a sales increase and since	13:20:26	21 products?	13:23:35
22 we set our own pricing, the vendor could offer a	13:20:33	22 A Yes.	13:23:35
23 sell through bonus and say, "You are going to make	13:20:41	23 Q Was price protection ever negotiated	13:23:36
24 \$10 more, \$15 more, \$20 more for all the ones that	13:20:45	24 after the point in time at which you had already	13:23:39
25 you sell during this period of time.	13:20:50	25 purchased the CRT finished products?	13:23:41

22 (Pages 82 - 85)

VERITEXT REPORTING COMPANY

212-267-6868

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516-608-2400

	Page 86	Page 87
1 A Yes.	13:23:43	truck
2 Q Was one of those points in time for price protection more common than the other, that is, during the initial negotiations versus once you already owned the products?	13:23:49 13:23:51 13:23:54 13:23:57	13:26:31 13:26:34 13:26:38 13:26:40
6 A Again, it changed over the years. I would say like the 1990s of this period there was a lot of master agreements that included price protection if something that vendor agreed would occur every time that they changed, they repositioned their product, their manufacturer's suggested price or their costing that we would be protected on that at that time.	13:23:59 13:24:02 13:24:05 13:24:09 13:24:13 13:24:20 13:24:22 13:24:26	13:26:48 13:26:52 13:26:56 13:26:59 13:27:01
14 The latter part of this period that we're talking about, that was a lot less likely, so because of that, you would end up asking for that sort of price protection on a more one on one type basis, and say similar to the sample here or I think when a sample is given someone else is now lower than you, and your product is not selling.	13:24:27 13:24:29 13:24:32 13:24:37 13:24:41 13:24:47 13:24:54	13:27:03 13:27:04 13:27:09 13:27:11 13:27:13
21 All the conversations go back to what is selling, so if you want to know when did you talk about sell through credits, it's when the product stops selling.	13:24:59 13:25:00 13:25:04 13:25:07	13:27:18 13:27:21 13:27:23 13:27:26 13:27:30 13:27:33
25 If you bought a whole bunch of it and it	13:25:08	13:27:35 13:27:38 13:27:44 13:27:50 13:27:54
	Page 87	Page 89
1 is not selling, then you're going to talk about sell through credits or anything else you can do to get it to sell.	13:25:10 13:25:12 13:25:14	1 own branches to do part of the delivery, so yes.
4 If it's selling you are not having those conversations.	13:25:16 13:25:19	13:28:00 13:28:12 13:28:15
6 Q When you're talking about price protection protecting Circuit City, what does that mean in terms of were you protecting Circuit City's expected revenue or were you protecting margin? What was that protection?	13:25:23 13:25:25 13:25:28 13:25:31 13:25:35	4 A Yes.
11 A You are protecting Circuit City's profitability because if we own product that costs more than what we paid for it, then we can actually be losing money, so I guess that is the simplest answer. We are protecting our profitability.	13:25:36 13:25:39 13:25:43 13:25:46 13:25:52 13:25:56	13:28:17 13:28:18 13:28:22 13:28:26 13:28:31 13:28:35
17 Q When price protection was included in your vendor agreements, do you know how Circuit City was protecting its profitability?	13:25:58 13:26:01 13:26:04	5 Q How were volume discounts negotiated?
20 MR. LAHAD: Objection, vague.	13:26:08	6 A You would negotiate saying, "That if I bought X amount of product either all at once or over a period of time, then I want a better price," and you might have several goals.
21 THE WITNESS: No. Price protection would say that if the cost moves, then all of the product that you own will be reduced to the new cost and therefore we would not own product that wasn't as competitive.	13:26:09 13:26:13 13:26:19 13:26:24 13:26:28	10 "If I sell this amount, I get it at this cost. If I sell at that point, I get this cost."
		13:28:43 13:28:51 13:28:53 13:28:55 13:28:57 13:28:58
		16 Q How were those funds negotiated for?
		17 A I don't know what you're asking.
		18 Q How did Circuit City select the amount of market development funds it would seek from CRT finished product vendors?
		13:29:10 13:29:12 13:29:14 13:29:17 13:29:19
		21 A It would start with history. What had you been getting from this particular vendor to keep the marketplace going?
		22 You would compare them to how much of your business, if it's going to increase
		13:29:23 13:29:26 13:29:29 13:29:34

23 (Pages 86 - 89)

VERITEXT REPORTING COMPANY

212-267-6868

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516-608-2400

Page 90	Page 92
1 their business, or are you decreasing it? 13:29:38	1 products ever leave Circuit City to pay more for 13:32:37
2 If I was talking to LG, and said, "Last 13:29:41	2 another product from that same CRT finished 13:32:41
3 year I bought 10,000 pieces from you. This year I 13:29:45	3 product vendor? 13:32:43
4 am going to buy 100,000 pieces. Last year you 13:29:48	4 A Yes. 13:32:44
5 gave me \$2,000 worth MDF. Those 100,000 pieces is 13:29:51	5 Q Other than the non-priced terms we have 13:32:48
6 a significant part my business, so therefore I 13:29:57	6 just been discussing like MDF funds and price 13:32:51
7 need this amount of MDF." 13:30:00	7 protection, are there other terms that were 13:32:54
8 Q Did Circuit City consistently receive 13:30:10	8 important to Circuit City in its negotiating for 13:32:56
9 MDF funds from its CRT finished product vendors? 13:30:13	9 CRT finished product purchases? 13:32:59
10 A Yes. 13:30:17	10 A Other than costs and MDF, is that what 13:33:03
11 Q Did Circuit City negotiate the amount of 13:30:21	11 you're asking? 13:33:11
12 floor space that specific CRT finished product 13:30:24	12 Q And sell through credit and volume 13:33:13
13 vendors products would receive on Circuit City's 13:30:27	13 discounts and selling? 13:33:16
14 floors? 13:30:29	14 A Right, so the way the buyers looked at 13:33:18
15 MR. LAHAD: Vague. 13:30:31	15 it was that there was a cost that was going to go 13:33:22
16 THE WITNESS: Yes, because we negotiated 13:30:38	16 into the system that you bought it and that was it 13:33:26
17 how many SKUs or models we were going to 13:30:44	17 and is that going to basically work overall? 13:33:30
18 carry, therefore that becomes floor space. 13:30:48	18 Then you also had all of these other 13:33:35
19 but we did not do it the way you are saying 13:30:53	19 funds that were market development funds, whether 13:33:38
20 it. 13:30:56	20 they be sell through. 13:33:43
21 We did not say, "We will give you 15 13:30:57	21 Volume discounts, typically, went 13:33:47
22 feet of space for X amount dollars." It 13:31:00	22 directly into costs because, again, they are 13:33:50
23 would be much more about, "We carried four 13:31:04	23 calculated, and so on, but if it was a sell 13:33:53
24 SKUs from you last year, and we only plan on 13:31:08	24 through credit, if it was to fund a rebate, if it 13:33:56
25 carrying three from you this year." I will 13:31:11	25 was to fund a display, things like that, those all 13:34:01
Page 91	Page 93
1 use models. That is probably the easiest 13:31:21	1 would be considered MDF for the buyer. 13:34:08
2 way. 13:31:24	2 You will see documents. You 13:34:14
3 BY MS. LIN: 13:31:24	3 probably already have. CES-II is what we refer to 13:34:17
4 Q I'm not clear on your last answer. In 13:31:26	4 as those MDF funds. CES, consumer electronic show 13:34:22
5 negotiating the number of models Circuit City 13:31:27	5 Roman numeral 2. 13:34:24
6 would be purchasing, was that one collective 13:31:31	6 Like we had a CES-I markup that you saw 13:34:33
7 negotiation purchase those models together or what 13:31:34	7 earlier and we had a CES-II which was where the 13:34:38
8 did you mean? 13:31:36	8 marketing funds went into for the all of these 13:34:43
9 A Because usually the products all 13:31:37	9 type of activities. 13:34:49
10 transitioned at the same time. Instead of having 13:31:41	10 Q So to clarify. What types of funds 13:34:52
11 negotiated about a single product you were 13:31:45	11 would be included in that CES-II category? 13:34:54
12 generally talking about all the products that were 13:31:49	12 A Anything that was provided by the vendor 13:34:57
13 changing for that time period and the vendor would 13:31:52	13 that did not go directly into the costs of the 13:35:00
14 show you 12 products knowing that you never bought 13:31:57	14 goods. 13:35:04
15 more than three. 13:32:03	15 Q Would you list those funds out for me? 13:35:08
16 The vendor is trying to, of course, get 13:32:06	16 A Sell through credits were typically not 13:35:11
17 you to buy more products, and as a buyer you want 13:32:08	17 included in the cost. Support for rebates. 13:35:19
18 to buy as few as you need and not one more. So 13:32:12	18 Supports for ads. Support for displays. Support 13:35:25
19 that was the negotiation. 13:32:18	19 for training. Those are the biggies. 13:35:30
20 Q When Circuit City was negotiating its 13:32:24	20 Q And those are all forms of support that 13:35:37
21 costs on CRT finished products, was it typically 13:32:27	21 Circuit City received from CRT manufacturing 13:35:39
22 negotiating the costs for multiple products from 13:32:29	22 vendors? 13:35:42
23 one vendor at the same time? 13:32:32	23 MR. LAHAD: Misstates the testimony. 13:35:44
24 A Yes. 13:32:34	24 THE WITNESS: We received it from CRT 13:35:46
25 Q Would a cost deal on one of those 13:32:34	25 manufacturers, certainly. 13:35:50

24 (Pages 90 - 93)

VERITEXT REPORTING COMPANY

212-267-6868

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516-608-2400

	Page 94		Page 96
1 BY MS. LIN:	13:35:54	1 MR. GRALEWSKI: When it is convenient, 13:38:47	
2 Q Are you familiar with the term spiff? 13:35:56		2 can we take a very short break, I don't want 13:38:47	
3 A Yes. 13:35:58		3 to interrupt your questioning, 13:38:51	
4 Q What is that? 13:35:58		4 MS. LIN: I think we have a little bit 13:38:53	
5 A It's a specific commission for a 13:36:00		5 longer to go. 13:38:55	
6 specific product. 13:36:04		6 BY MS. LIN: 13:38:57	
7 Q Did Circuit City's sales employees 13:36:07		7 Q Would Circuit City ever request non-cost 13:38:58	
8 receive commissions other than spiffs? 13:36:12		8 terms such as additional MDF funds in lieu of a 13:39:01	
9 A Yes. 13:36:14		9 cost decrease on a CRT finished product purchase? 13:39:03	
10 Q Folks on the spiff first, how did spiff 13:36:18		10 A Because the buyers is first and foremost 13:39:08	
11 payments work? 13:36:20		11 rated on the profitability of the product based on 13:39:17	
12 A Let me restate earlier. Our sales 13:36:22		12 store costs, that would be an unusual activity for 13:39:21	
13 floors changed from commission to non-commission 13:36:26		13 long term type of things. 13:39:32	
14 during this period of time. 13:36:29		14 But as we talked about for sell through 13:39:35	
15 I don't know the exact date, but again, 13:36:31		15 credit in effect that's what you're doing, is 13:39:39	
16 it is probably around 2000 there was no 13:36:37		16 you're getting some dollars to help you sell it 13:39:41	
17 commission. 13:36:41		17 for a little bit of time. 13:39:45	
18 Q So salespeople received commission at 13:36:42		18 It is not really reducing the cost, but 13:39:47	
19 Circuit City prior to approximately 2000 and then 13:36:45		19 it is sort of paying for you to take an action 13:39:51	
20 no longer did after that? 13:36:47		20 like buying an ad. 13:39:57	
21 A Right, and it may have been as late as 13:36:49		21 Q Sell through credits could be used to 13:39:59	
22 2002. I cannot quote that, but when they received 13:36:53		22 reduce Circuit City's sort of actual costs even if 13:40:01	
23 commissions they received a set percentage of the 13:36:59		23 they did not decrease its accounted for cost of a 13:40:06	
24 retail price of the product as a commission and 13:37:05		24 CRT finished product? 13:40:09	
25 they may or may not also receive a spiff. 13:37:09		25 MR. LAHAD: Misslates the testimony. 13:40:11	
	Page 95		Page 97
1 Q After Circuit City abolished its 13:37:14		1 THE WITNESS: Yes, I don't know what you 13:40:12	
2 commissions around 2000, or 2002, did Circuit City 13:37:17		2 mean by actual costs. 13:40:14	
3 sales associates continue to receive spiffs? 13:37:22		3 BY MS. LIN: 13:40:15	
4 A No. 13:37:24		4 Q A sell through credit could decrease 13:40:18	
5 Q Were spiff payments something that was 13:37:27		5 Circuit City's overall costs of a CRT finished 13:40:21	
6 negotiated with CRT finished product vendors? 13:37:29		6 product without decreasing costs as accounted for 13:40:24	
7 A No. 13:37:32		7 in Circuit City's transactional data? 13:40:27	
8 Q How were spiffs determined? 13:37:33		8 MR. LAHAD: Same objection. 13:40:30	
9 A Spiffs are directive, meaning, that you 13:37:40		9 THE WITNESS: Yes, the costs of the 13:40:31	
10 are using them to encourage the sale of that 13:37:44		10 product as we looked at it was the costs that 13:40:36	
11 specific product, so they could be determined 13:37:48		11 we paid for the product and MDF was evaluated 13:40:40	
12 because you have an excess inventory. 13:37:52		12 as a separate line. 13:40:47	
13 They could be determined because it 13:37:55		13 So we would look at, "Are we delivering 13:40:52	
14 supports your sales strategy or they could be 13:37:58		14 the margins and are we delivering the MDF 13:40:56	
15 there because the product is highly profitable. 13:38:03		15 that our budgets have put out there?" 13:40:59	
16 Q Were spiffs ever funded by CRT finished 13:38:10		16 MS. LIN: Why don't we go ahead and take 13:41:03	
17 product vendors? 13:38:13		17 a short break and go off the record. 13:41:04	
18 A During the time period we are talking 13:38:14		18 THE VIDEOGRAPHER: The time is 1:41 p.m. 13:41:04	
19 about, I don't know of any cases. 13:38:16		19 We are off the record. (Whereupon, a break 13:41:07	
20 When I first became a buyer, I saw some 13:38:19		20 in the proceedings commenced at 1:41 p.m. and 13:41:10	
21 documents that said, "We will fund a spiff for you 13:38:23		21 on resuming at 1:48 p.m.) 13:41:10	
22 during a certain period of time and what have 13:38:29		22 THE VIDEOGRAPHER: Time is approximately 13:48:36	
23 you," and I don't know if — I doubt that it was 13:38:32		23 1:48 p.m. We are back on the record. 13:48:39	
24 CRT product because combo product was not even 13:38:34		24 BY MS. LIN: 13:48:42	
25 introduced at that time, so I wouldn't think so. 13:38:38		25 Q Thank you, Mr. Deason. Did Circuit City 13:48:43	

25 (Pages 94 - 97)

VERITEXT REPORTING COMPANY

212-267-6868

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516-608-2400

	Page 98	Page 100
1	have a vendor qualification process that it used 13:48:45	1 City's master agreement? 13:51:48
2	for vendors of CRT finished products? 13:48:47	2 A A CRT vendor? 13:51:50
3	A We created a vendor management group in 13:48:52	3 Q Yes. 13:51:52
4	approximately 2004, if my memory is correct, that 13:48:55	4 A I do not. 13:51:52
5	created a score card of things that we cared 13:49:07	5 Q During the relevant period, did Circuit 13:51:57
6	about, and in that process we issued saying, "We 13:49:12	6 City have any preferred suppliers of CRT finished 13:52:00
7	want all of our vendors to do this." 13:49:17	7 products? 13:52:03
8	Did they all do it? No. 13:49:20	8 A No. 13:52:04
9	Q Was that a qualification process in the 13:49:24	9 Q Are you familiar with Circuit City 13:52:10
10	sense that Circuit City refused to purchase from 13:49:26	10 having sheltered brands of CRT products? 13:52:12
11	certain vendors that would meet specified terms? 13:49:29	11 A Yes. 13:52:15
12	MR. LAIIAD: Objection, vague. 13:49:36	12 Q What were sheltered brands? 13:52:17
13	THE WITNESS: As you asked earlier about 13:49:38	13 A Brands that were not distributed as 13:52:19
14	would you buy a product that had 60-day terms 13:49:45	14 widely. 13:52:22
15	versus another one that had 30-day terms, it 13:49:53	15 Q What determined whether a brand would be 13:52:24
16	would certainly be a factor, it may be a tie 13:49:55	16 a sheltered brand? 13:52:31
17	breaker, but it wasn't cut and dry the way 13:50:02	17 A I just answered that. It is the 13:52:34
18	you say, "If you do not do this, I am not 13:50:05	18 definition of it. If it is not carried, but in a 13:52:37
19	buying from you at all." 13:50:07	19 few locations, or in very limited locations, that 13:52:44
20	It would be considered with all the 13:50:09	20 Is the definition of it being sheltered. There 13:52:48
21	other factors including the fact of, "Do you 13:50:10	21 are not very many other people that you have to 13:52:50
22	have to have the product?" 13:50:13	22 compete with. 13:52:53
23	BY MS. LIN: 13:50:14	23 Q A sheltered brand would not be carried 13:52:55
24	Q That's a good one to start with. 13:50:14	24 at many locations outside of Circuit City? 13:52:57
25	A Right. I mean, if you've got to have 13:50:16	25 A Correct. 13:52:59
	Page 99	Page 101
1	Panasonic, then you have got to have Panasonic. 13:50:17	1 Q Do you recall any specific CRT finished 13:53:00
2	Q Prior to the program you were just 13:50:21	2 products that were sheltered? 13:53:06
3	discussing that was implemented in 2004, was there 13:50:22	3 A Vendors sold their products. They would 13:53:13
4	any kind of vendor qualification process used by 13:50:25	4 change whether they would distribute or how they 13:53:17
5	Circuit City for CRT finished product purchases? 13:50:28	5 distributed their products. 13:53:21
6	A Overall, there was sort of a boilerplate 13:50:31	6 At one point a brand might be sheltered 13:53:23
7	of vendor agreements, master agreements that would 13:50:36	7 and then at another point it may not be sheltered 13:53:27
8	say we expect not to be held liable in case of an 13:50:42	8 because the majority of it happened before this 13:53:33
9	accident, indemnification that we are going to get 13:50:49	9 case started, and I will use Mitsubishi as an 13:53:37
10	X amount of terms, that we're going to get this, 13:50:54	10 example. 13:53:40
11	and this, and this, but there wasn't a "set in 13:50:55	11 Mitsubishi originally sold only to 13:53:41
12	stone" type of process as far as this is what we 13:51:03	12 consumer electronic stores and that had commission 13:53:43
13	expect from everybody. 13:51:07	13 sales forces and at some point they decided that 13:53:48
14	Q Did Circuit City have a master agreement 13:51:09	14 it didn't have to have commission sales forces 13:53:52
15	in place with every vendor from which it purchased 13:51:11	15 anymore. 13:53:55
16	CRT finished products? 13:51:15	16 Q Did Circuit City maintain sheltered 13:53:57
17	A No. 13:51:17	17 brands of CRT finished products for off the 13:54:00
18	Q Are there any factors that distinguished 13:51:19	18 relevant period? 13:54:04
19	when Circuit City would purchase CRT finished 13:51:22	19 A Circuit City could not determine. They 13:54:06
20	products without a master agreement in place? 13:51:27	20 cannot determine whether it is sheltered or not. 13:54:10
21	A If the vendor refused to sign one and 13:51:31	21 The vendor makes those decisions. 13:54:13
22	you still needed to carry the product and the 13:51:35	22 If it is a sheltered product, then it is 13:54:15
23	other would be a lazy buyer. 13:51:39	23 desirable to Circuit City, so to the degree that 13:54:19
24	Q Are you aware of any instances in which 13:51:42	24 products were sheltered, Circuit City would 13:54:22
25	a finished product vendor refused to sign Circuit 13:51:45	25 actively pursue those brands. 13:54:28

26 (Pages 98 - 101)

VERITEXT REPORTING COMPANY

212-267-6868

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516-608-2400

Page 102		Page 104	
1 Q Why did Circuit City find it desirable	13:54:30	1 A At one time we did not carry Samsung	13:56:58
2 to have sheltered products?	13:54:32	2 product at all, for example, and we started and	13:57:02
3 A Because it is less competition. It's a	13:54:34	3 stopped various relationships over the years for	13:57:09
4 product that the customer can only buy from you,	13:54:37	4 various reasons.	13:57:15
5 and in some cases, only you and in some cases	13:54:41	5 Hitachi had been a good partner of	13:57:18
6 maybe two or three places as opposed to 1,000.	13:54:44	6 Circuit City for quite a long time. I was	13:57:20
7 Q How many sheltered products would	13:54:51	7 involved with developing the DVD camcorder with	13:57:24
8 Circuit City tend to have at a time in the CRT	13:54:54	8 Hitachi and so they made CRT -- well they sold CRT	13:57:28
9 finished products sort of specier?	13:54:56	9 product. I don't know if they made it.	13:57:35
10 MR. LAIIAD: Products or brand?	13:55:00	10 They sold CRT product and so I know that	13:57:37
11 MS. LIN: Products.	13:55:01	11 we had a particularly good relationship with	13:57:40
12 THE WITNESS: I don't know.	13:55:02	12 Hitachi at times and at other times we didn't.	13:57:43
13 BY MS. LIN:	13:55:03	13 Q Having a good relationship with a	13:57:49
14 Q Do you know how many sheltered brands	13:55:03	14 particular vendor might among other things being	13:57:52
15 Circuit City would tend to have at a time in the	13:55:05	15 equal influence Circuit City's decision to	13:57:54
16 CRT finished product context?	13:55:11	16 purchase from that vendor?	13:57:57
17 A No.	13:55:13	17 A It sort of goes back to, "Why are you	13:57:59
18 Q Were Circuit City's purchase	13:55:14	18 having a good relationship?" and they go back to	13:58:03
19 negotiations for CRT finished products ever	13:55:21	19 all of those factors because they are giving you	13:58:06
20 affected by the individual buyers relationships	13:55:25	20 product that is not widely sold, they are giving	13:58:08
21 with vendor representatives?	13:55:28	21 you product that has extremely good profitability	13:58:11
22 MR. LAIIAD: Objection, vague.	13:55:30	22 opportunities.	13:58:18
23 THE WITNESS: I wouldn't say influenced	13:55:34	23 Obviously, we set our own price. They	13:58:20
24 by their relationship to a single person, but	13:55:40	24 give you funding that allows you to train your	13:58:23
25 the relationship to the company.	13:55:46	25 people and run the proper ads that you want to	13:58:26
Page 103		Page 105	
1 If XYZ company is a company that	13:55:50	1 run.	13:58:29
2 usually does what they say they are going to	13:55:54	2 In that aspect, yes, I mean, but all of	13:58:30
3 do, then you have a relationship that is	13:55:56	3 those factors make them the sort of the good	13:58:33
4 more beneficial than one that doesn't.	13:55:59	4 relationship, not the good relationship makes the	13:58:39
5 BY MS. LIN:	13:56:02	5 others.	13:58:42
6 Q Would Circuit City prefer to do business	13:56:02	6 Q So the availability of MDF funds to	13:58:48
7 with those CRT finished product vendors it	13:56:05	7 Circuit City might influence Circuit City's vendor	13:58:52
8 considered itself to have a consistent	13:56:10	8 selection to purchase a CRT finished product?	13:58:54
9 relationship with?	13:56:11	9 MR. LAIIAD: Misstates testimony.	13:58:57
10 A We prefer to do business with those that	13:56:13	10 THE WITNESS: The costs of the product	13:58:59
11 we trust.	13:56:16	11 is negotiated first and then demand of the	13:59:01
12 Q Do you recall specific CRT finished	13:56:18	12 product and all of those sort of things, and	13:59:05
13 product vendors that Circuit City trusted during	13:56:21	13 yes, we expect to have MDF as part of that,	13:59:08
14 the relevant period?	13:56:23	14 but there are so many other factors and to	13:59:13
15 MR. GRALEWSKI: Objection, form.	13:56:26	15 put it way you put it, I would not.	13:59:17
16 THE WITNESS: Yes, again, I could only	13:56:28	16 MS. LIN: Give me a second to dig into	13:59:27
17 speak to those brands that I dealt with	13:56:30	17 my box of tricks down here.	13:59:30
18 directly, but I don't know how I could answer	13:56:32	18 (Whereupon, Deposition Exhibit 2837 is marked for	13:59:47
19 the question for all the other buyers which I	13:56:40	19 Identification.)	13:59:47
20 think is what you are asking me.	13:56:43	20 MS. LIN: I am going to mark as Exhibit	13:59:47
21 BY MS. LIN:	13:56:46	21 2837 a document with Bates No. CC 0148714. I	13:59:49
22 Q Testifying on behalf of Circuit City,	13:56:48	22 will represent to you that the handwriting on	14:00:02
23 are there any CRT finished product vendors of	13:56:50	23 this document was as produced by Circuit	14:00:02
24 which you are aware of Circuit City not having a	13:56:52	24 City.	14:00:05
25 strong relationship with?	13:56:57	25 BY MS. LIN:	14:00:22

27 (Pages 102 - 105)

VERITEXT REPORTING COMPANY

212-267-6868

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516-608-2400

	Page 106	Page 108	
1 Q Are you familiar with the people on the first page of Exhibit 2837?	14:00:22	1 he does what he is discussing here that he risked harming that trust.	14:03:57
2 A Yes.	14:00:24	2 BY MS. LIN:	14:03:59
3 Q Who are those people?	14:00:26	3 Q Engaging in a more favorable deal here with Panasonic might damage Circuit City's relationship with another vendor?	14:04:10
4 A Andrew Scholclapper who is a buyer. Rick Souder who was either a buyer or a division merchandise manager, most likely the division merchandise manager, and David Cecile, who was either a buyer or a division merchandise manager	14:00:30	4 MR. GRALEWSKI: Same objection.	14:04:13
5 at the time. This is 2000. So I am not sure.	14:00:34	5 MR. LAHAD: Misstates the testimony.	14:04:16
6 Q I am concentrating on the first page of Exhibit 2837, what do you understand Andrew Scholclapper to be discussing with Mr. Souder and Mr. Cecile?	14:00:39	6 THE WITNESS: Yes, I don't know that	14:04:19
7 A Objection, form.	14:00:43	7 MR. GRALEWSKI: Same objection.	14:04:21
8 THE WITNESS: He is discussing the impact of Panasonic, and what I believe PTV stands for is projection television, but I don't know.	14:00:47	8 THE WITNESS: Yes, I don't know that	14:04:22
9 He is discussing the program with Panasonic and what the impact is to Circuit City.	14:01:05	9 MR. LAHAD: Misstates the testimony.	14:04:23
10 BY MS. LIN:	14:01:07	10 THE WITNESS: Yes, I don't know that	14:04:25
11 Q What concerns does Mr. Scholclapper raise?	14:01:09	11 I can't answer that question because I can't tell you that this is a more favorable deal.	14:04:28
12 A Objection, form.	14:01:11	12 THE WITNESS: Yes, I don't know that	14:04:32
13 THE WITNESS: He is discussing the impact of Panasonic, and what I believe PTV stands for is projection television, but I don't know.	14:01:13	13 I think he is actually arguing that it is a less favorable deal.	14:04:35
14 THE WITNESS: Give me a moment to read this.	14:01:15	14 BY MS. LIN:	14:04:37
15 A The short answer I would give you is that he is discussing the impact of doing business with Panasonic and what impact it will have on the business that he has been discussing to do with Hitachi and Thomson.	14:01:20	15 Q Is a part of the reason that the proposed deal from Panasonic in Exhibit 2837 less attractive because it might damage relationships with other of Circuit City's CRT finished product vendors?	14:04:40
16 THE WITNESS: Hang on a second. Yea.	14:01:22	16 MR. LAHAD: Lacks foundation and calls for speculation.	14:04:42
17 BY MS. LIN:	14:01:24	17 MR. GRALEWSKI: Same objections.	14:04:47
18 Q Absolutely.	14:01:26	18 THE WITNESS: I think he is arguing again that he doing this is going to cause	14:04:48
19 A The short answer I would give you is that he is discussing the impact of doing business with Panasonic and what impact it will have on the business that he has been discussing to do with Hitachi and Thomson.	14:02:46	19 him to have less credibility with the people he has to negotiate with.	14:04:52
20 THE WITNESS: Backing out on them now might lose his trust in the long term.	14:02:53	20 BY MS. LIN:	14:04:53
21 MR. GRALEWSKI: Same objection.	14:02:58	21 Q It was important for buyers to maintain their credibility with CRT finished product vendors?	14:04:57
22 THE WITNESS: Hang on a second. Yea.	14:03:03	22 MR. LAHAD: Lacks foundation and calls for speculation.	14:04:59
23 BY MS. LIN:	14:03:12	23 THE WITNESS: I think he is arguing again that he doing this is going to cause	14:04:59
24 Q What concerned you to understand Mr. Scholclapper to be expressing there?	14:03:15	24 him to have less credibility with the people he has to negotiate with.	14:05:03
25 A Same objection.	14:03:18	25 BY MS. LIN:	14:05:06
26 THE WITNESS: Hang on a second. Yea.	14:03:22	26 Q It was important for buyers to maintain their credibility with all vendors.	14:05:08
27 BY MS. LIN:	14:03:24	27 Q Could you read point number 4 on this.	14:05:11
28 Q What concerned you to understand Mr. Scholclapper to be expressing there?	14:03:27	28 A Out loud?	14:05:14
29 A Same objection.	14:03:30	29 Q Just to yourself is fine. Do you understand what Mr. Scholclapper is referring to when he says "references playing by the rule book"?	14:05:15
30 THE WITNESS: Hang on a second. Yea.	14:03:40	30 MR. GRALEWSKI: Same objections.	14:05:19
31 BY MS. LIN:	14:03:42	31 THE WITNESS: He says that what he means is fair costs and distributions result in a meeting are profit expectations so that's the only way that it would imply that that is what he means.	14:05:22
32 Q What concerned you to understand Mr. Scholclapper to be expressing there?	14:03:45	32 MR. LAHAD: Lacks foundation and calls for speculation.	14:05:24
33 A Same objection.	14:03:46	33 THE WITNESS: He says that what he means is fair costs and distributions result in a meeting are profit expectations so that's the only way that it would imply that that is what he means.	14:05:27
34 THE WITNESS: He is basically telling the supervisors that he is building trust in him and therefore in Circuit City and that if	14:03:47	34 BY MS. LIN:	14:05:30
35 A Same objection.	14:03:53	35 Q Did Circuit City expect that these	14:05:34
			14:06:04
			14:06:07
			14:06:09
			14:06:12
			14:06:16
			14:06:19
			14:06:22
			14:06:24
			14:06:31
			14:06:34

28 (Pages 106 - 109)

VERITEXT REPORTING COMPANY

212-267-6868

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516-608-2400

Page 110		Page 112	
1 vendors would provide fair costs and	14:06:36	1 From the time you saw the product to	14:09:10
2 distributions?	14:06:40	2 the time you made the agreement, it is like	14:09:12
3 A Yes.	14:06:41	3 one long negotiation.	14:09:15
4 Q Where does Circuit City's negotiations	14:07:00	4 BY MS. LIN:	14:09:16
5 with finished product vendors occur for CRT	14:07:02	5 Q Were negotiations ever concluded on	14:09:16
6 finished products?	14:07:07	6 those trips abroad in terms of selecting a cost to	14:09:19
7 MR. LAHAD: Is there a time period?	14:07:09	7 Circuit City at which it would buy CRT finished	14:09:24
8 MS. LIN: During the relevant time	14:07:10	8 products?	14:09:27
9 period.	14:07:11	9 A It is possible because there are certain	14:09:28
10 THE WITNESS: When we go to visit them	14:07:12	10 products, "We really want you to sell this and	14:09:31
11 overseas, where you have got everybody	14:07:17	11 it's a brand new product and there's nothing like	14:09:35
12 together and talking about the product as we	14:07:18	12 it and it's the first 40-inch television," for	14:09:42
13 talked about earlier you start the	14:07:20	13 example.	14:09:48
14 negotiations there because that's when you	14:07:23	14 I could see and I sit in on some of	14:09:49
15 first see the product, they first talk about	14:07:26	15 these meetings because I was video, and I could	14:09:54
16 what they are thinking that they are going to	14:07:28	16 see a buyer saying, "We are going to buy that and	14:09:56
17 put their suggested retail price at, and some	14:07:31	17 all he has seen is the list price and he might buy	14:10:00
18 of those are like trial balloons to see if	14:07:33	18 it at a list price or he might be able to get a	14:10:04
19 you think that is viable or not, it goes	14:07:38	19 little better, but he is really committed either	14:10:08
20 straight out.	14:07:40	20 way.	14:10:11
21 "We are thinking that this could make	14:07:42	21 So to answer your question, it could	14:10:11
22 \$399 in the market place or retail price, do	14:07:43	22 happen and I am sure it did happen along the way	14:10:14
23 you think that would be viable?" and you	14:07:46	23 particularly for any new dynamic type of change	14:10:17
24 would say, "No, I don't think so."	14:07:48	24 which for CRT would have been size.	14:10:26
25 It starts at that big line where you	14:07:52	25 Q When Circuit City's representatives went	14:10:32
Page 111		Page 113	
1 have got everybody from the company there,	14:07:54	1 abroad to examine CRT finished products, was it	14:10:36
2 and you have got -- when we go to Japan, we	14:07:55	2 meeting with domestic suppliers based here in the	14:10:41
3 would stay for the week and we visit all the	14:08:03	3 United States that also went abroad or with -- let	14:10:41
4 vendors in Japan and we would go to Korea	14:08:07	4 me stop there.	14:10:47
5 and we would stay for the week.	14:08:09	5 MR. LAHAD: Vague.	14:10:49
6 We would go to China and do the same	14:08:10	6 THE WITNESS: The majority -- I am	14:10:50
7 thing, so that's where it starts, and then,	14:08:13	7 sorry?	14:10:51
8 typically, what would happen is that you	14:08:18	8 MR. LAHAD: Vague.	14:10:53
9 would get back home and you would have,	14:08:23	9 THE WITNESS: The majority of the time	14:10:54
10 "Okay, I know we talked about that it might	14:08:25	10 we would meet with representatives from the	14:10:56
11 be \$799, but we have decided that it is	14:08:29	11 company in whatever country we are visiting	14:11:03
12 going to be \$699 and here's the costs that	14:08:30	12 and representatives of theirs that managed	14:11:05
13 is manufactured suggested retail price and	14:08:35	13 the sales in the U.S. would be there with us.	14:11:10
14 here is the cost to you."	14:08:37	14 It was very rare that they were not	14:11:14
15 Then you would start having the	14:08:40	15 also there, but there would be large amounts	14:11:16
16 negotiations sometimes in person, but most	14:08:41	16 of people because the vendor wants all of	14:11:20
17 likely over the phone or through email.	14:08:46	17 their people to say, "This is the guy who is	14:11:25
18 You might maybe visit again.	14:08:49	18 either going to buy it or not buy it."	14:11:28
19 They might have a show where we change	14:08:52	19 There would be a large cast of people.	14:11:32
20 some things, so what you saw might not	14:08:55	20 You might have 50 people in the room. You	14:11:35
21 exactly be what the product is going to look	14:08:57	21 might have seats all the way around where	14:11:38
22 like and so you have to go either back to	14:08:59	22 you didn't even know where half of these	14:11:41
23 Japan or wherever or go to a corporate	14:09:01	23 people did, but you typically had the	14:11:43
24 office in the U.S. and look at the product	14:09:05	24 president of the company that would come in.	14:11:46
25 again and continue to negotiate.	14:09:07	25 You would typically have the head of	14:11:49

29 (Pages 110 - 113)

VERITEXT REPORTING COMPANY

212-267-6868

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516-608-2400

Page 114		Page 116	
1	that division who would come in. 14:11:50	1	times. 14:14:44
2	You would have like the U.S. president 14:11:54	2	BY MS. LIN: 14:14:44
3	of that company come in. You would have 14:11:58	3	Q I am trying to understand what that 14:14:44
4	head of sales for that company come in and 14:12:00	4	means? 14:14:45
5	then you might have the Circuit City rep, 14:12:03	5	A What I meant is you would have, it 14:14:45
6	the national account manager come in, but in 14:12:06	6	wasn't a daily activity, but something might 14:14:49
7	some rare cases, if there was something 14:12:12	7	happen where that would occur whether it be 14:14:53
8	specific you wanted to go see, you might 14:12:14	8	because the negotiations are not going well, or 14:14:56
9	just be seeing some product and they may not 14:12:17	9	because sales are not going well. 14:14:58
10	be paying the money for U.S. people to be 14:12:21	10	I mean those are sort of the biggies 14:15:01
11	going with you. That would be extremely 14:12:24	11	that there would be conversations that we would 14:15:04
12	rare. 14:12:26	12	have people from outside of the country in on the 14:15:07
13	BY MS. LIN: 14:12:26	13	conversation to talk about what needed to be done 14:15:13
14	Q Did the foreign CRT finished product 14:12:26	14	to get sales. 14:15:18
15	companies pay for Circuit City's representatives 14:12:35	15	More often what you would get is a visit 14:15:21
16	to travel to them? 14:12:38	16	from people that work outside of the country on a 14:15:27
17	A Yes. 14:12:39	17	daily basis that their offices are in Japan or 14:15:32
18	Q Other than the meetings? 14:12:43	18	Korea, et cetera, that would come to the U.S. and 14:15:35
19	A They didn't pay all expenses. We sort 14:12:45	19	with the national account, the U.S. sales team 14:15:39
20	of had some rules about that. Typically they 14:12:48	20	would come and visit Circuit City's headquarters 14:15:42
21	would pick up air fare and hotel and we pick up 14:12:52	21	and talk to them about, "Why is this product not 14:15:47
22	anything else like parking and incidentals and so 14:12:57	22	selling? Why are we not doing more business 14:15:49
23	on and since we would arrange them in the way we 14:13:03	23	together, et cetera. Why aren't you buying five 14:15:55
24	did, it would be shared with all of the people we 14:13:07	24	pieces?" The sales people say they can only sell 14:16:01
25	visited. 14:13:09	25	you three. "Why aren't you buying these other 14:16:04
Page 115		Page 117	
1	We used to have what we called 14:13:10	1	two?" 14:16:07
2	"two-a-days," so that for the first half of a day 14:13:13	2	Q So foreign representatives from the CRT 14:16:10
3	you were with one vendor and the second half with 14:13:15	3	finished product manufacturer would sometimes come 14:16:13
4	another so that in the period of a week that's 10 14:13:18	4	to Circuit City to try to sell additional amounts 14:16:17
5	or 8 or whatever and then you divide the cost of 14:13:21	5	of their CRT finished products? 14:16:20
6	the air and the hotel by the amount of vendors. 14:13:24	6	MR. LAHAD: You switched from vendors to 14:16:22
7	Q Would the costs that the vendors spent 14:13:33	7	manufacturers. Are you using 14:16:24
8	related to those trips be reflected in any way in 14:13:36	8	interchangeably? 14:16:26
9	the Circuit City transactional data listing the 14:13:39	9	MS. LIN: I am sorry. 14:16:27
10	costs of CRT finished product purchases? 14:13:43	10	BY MS. LIN: 14:16:29
11	A No. 14:13:45	11	Q Would foreign CRT finished product 14:16:29
12	Q Other than the trips where Circuit 14:13:46	12	vendors sometimes come to Circuit City to try to 14:16:31
13	City's representatives went abroad to meet with 14:13:49	13	pitch selling more of their CRT finished products? 14:16:34
14	CRT finished product companies, did Circuit City's 14:13:52	14	A Yes. 14:16:37
15	representatives ever discuss CRT finished product 14:13:56	15	Q Did Circuit City have policies related 14:16:38
16	purchases negotiations with vendor representatives 14:14:00	16	to how to set its sales prices? So now we are 14:16:40
17	located outside of the United States? 14:14:06	17	switching from purchases to sales? 14:16:44
18	A There were specific times when we would 14:14:10	18	A Yes, so our daily then sale - do you 14:16:46
19	have phone calls with a U.S. representative that 14:14:13	19	mean like an advertised sale or do you mean the 14:16:57
20	they would conference in people from outside of 14:14:22	20	price that we sell it at? 14:17:00
21	the country, so yes. 14:14:26	21	Q The price that you would sell it at? 14:17:02
22	Q Can you recall what those specific 14:14:33	22	A Our standard policy was to price a 14:17:05
23	instances might be? 14:14:36	23	product at the manufacturer's suggested retail 14:17:08
24	MR. LAHAD: Specific vendors? 14:14:39	24	price to do our best to try to do that. 14:17:11
25	MS. LIN: He said there were specific 14:14:41	25	Q Did Circuit City have any policies 14:17:21

30 (Pages 114 - 117)

VERITEXT REPORTING COMPANY

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212-267-6868

516-608-2400

	Page 118	Page 120	
1 related to achieving certain margins based on its sale prices?	14:17:24	1 are going to find it in those, the proposed budgets, and finalized budgets and you are going to find it in the 3M Report, and then a lot of the other reports that we had prior to the 3M Report were on demand reports, so we could query the AS	14:20:34
2 A We had margin budgets to be able to put a business plan together. The pricing has to be competitive, so I would answer that, no, in that we did not price to hit the margin.	14:17:31	2 budgets and finalized budgets and you are going to find it in the 3M Report, and then a lot of the other reports that we had prior to the 3M Report were on demand reports, so we could query the AS	14:20:37
3 4 5 6	14:17:37	3 to find it in the 3M Report, and then a lot of the other reports that we had prior to the 3M Report were on demand reports, so we could query the AS	14:20:40
7 We priced to sell the product and then try to do whatever else we could do to influence the overall margins being better.	14:17:49	4 5 6 7	14:20:50
8 Q How did Circuit City select its margin budgets?	14:18:02	5 were on demand reports, so we could query the AS 6 400 and it tell us what have we sold and what our margins are overall, at the corporate level and we could take all the way down the store level,	14:20:53
9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	14:18:05	7 Q Did different stores have different margin budgets?	14:21:04
Q Based on history and opportunity. So if it's been delivering this, you are trying to at least maintain that, but there may be an opportunity to improve it if there are innovations or new items that you can get behind or if you can increase the average, even though it doesn't change the margin, if you increase the average retail, then you are making more profit dollars and that is really at the end of the day is what we were most measured on is the profit dollars.	14:18:10	A No.	14:21:14
The old joke inside is, "Yes, you made 30 points margin, but you sold \$100 and your budget was \$1,000, so you failed."	14:18:54	Q You said DMM, what is that?	14:21:16
Q Not good. Do you recall what Circuit	14:19:01	A Division merchandise manager. That title was sometimes the merchandise manager, sometimes division merchandise manager, and for the end of this period, I believe, was BTL, which is business team area lead	14:21:18
	Page 119	Page 121	
1 City's margin budgets were for CRT finished products during the relevant period?	14:19:04	1 to deliver the profit that my budget says that I need to deliver.	14:22:03
2 A No.	14:19:08	2 This is going to have an impact on my ability to make my budget.	14:22:07
3 Q What type of document would those margin budgets be tracked in?	14:19:09	3 Did we negotiate the budget, no.	14:22:09
4 MR. LAHAD: Objection, lacks foundation.	14:19:11	4 We are negotiating the product and needs to be a lower cost. The sort of simple way I put it is the buyers would	14:22:13
5 THE WITNESS: (No response)	14:19:15	5 But that is the only context I can think of it.	14:22:15
6 BY MS. LIN:	14:19:18	6 We definitely talked about margins and what our expected margins were and what are actual margins were.	14:22:19
7 Q Would those margin budgets be recorded somewhere in Circuit City's records?	14:19:19	7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	14:22:20
8 A Yes.	14:19:22	10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	14:22:24
9 Q Where?	14:19:24	11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	14:22:27
10 A Well, records. They would be communicated within the merchandising team and so we had a financial planning and analysis group, F, P and A, that you will see some documents called the 3M Report, and the 3M Report would say, "This is your score card. Here's your budget broken down for the year, broken down to the week level," but DMMs were part of the budget process and would present to their general managers and to the vice president of merchandising, their business plans for overall profitability.	14:19:25	11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	14:22:31
11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	14:19:27	11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	14:22:33
14 15 16 17 18 19 20 21 22 23 24 25	14:19:29	11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	14:22:36
15 16 17 18 19 20 21 22 23 24 25	14:19:33	11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	14:22:39
17 18 19 20 21 22 23 24 25	14:19:41	11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	14:22:42
18 19 20 21 22 23 24 25	14:19:46	11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	14:22:45
19 20 21 22 23 24 25	14:19:50	11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	14:22:49
20 21 22 23 24 25	14:19:57	11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	14:22:52
21 22 23 24 25	14:20:00	11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	14:22:55
22 23 24 25	14:20:12	11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	14:23:01
23 24 25	14:20:17	11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	14:23:05
24 25	14:20:21	11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	14:23:06
25	14:20:27	11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	14:23:08
	14:20:31	11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	14:23:11

Page 122		Page 124	
1 margins on its CRT finished product sales?	14:23:14	1 Q What did he do for Circuit City?	14:28:04
2 A I don't know. I would not think so.	14:23:18	2 A For over a decade, I believe he was a	14:28:06
3 Q Do you know if Circuit City's buyers in	14:23:27	3 trainer for Circuit City, and his last positions	14:28:10
4 the course of their negotiations for CRT finished	14:23:30	4 for Circuit City was that he worked in the store	14:28:15
5 products ever provided their margin targets to	14:23:34	5 merchandising department, but I do not know what	14:28:20
6 Circuit City finished product vendors?	14:23:37	6 he was responsible for.	14:28:25
7 A Yes. Let me amend that. We would	14:23:39	7 Q When you say trainer who was he	14:28:27
8 provide a targeted margin for that vendor, not our	14:23:58	8 training?	14:28:29
9 targeted margin overall.	14:24:05	9 A Sales counselors. Salespeople. Our	14:28:30
10 BY MS. LIN:	14:24:08	10 sales pool.	14:28:33
11 Q So Circuit City would provide specific	14:24:09	11 Q On how to sell products at Circuit City?	14:28:33
12 CRT finished product vendors with a margin Circuit	14:24:11	12 A (Non-verbalized response.)	14:28:38
13 City hoped to achieve selling that vendor's CRT	14:24:15	13 THE REPORTER: Is that a yes?	14:28:38
14 finished products?	14:24:18	14 THE WITNESS: I am sorry. Yes.	14:28:38
15 A Correct, and specifically those	14:24:19	15 THE REPORTER: That's all right. I just	14:28:38
16 products, so you might have five pieces from a	14:24:22	16 did not want the watered down version of it.	14:28:38
17 vendor, and say, if I am going to sell a \$700	14:24:28	17 BY MS. LIN:	14:28:38
18 product, then I expect to make 30 points off of	14:24:32	18 Q I want to direct your attention to the	14:28:44
19 it, but that one that is \$99 my expectation is	14:24:36	19 top of page 2 of Exhibit 2838. Do you see where	14:28:45
20 that I will make 20 points off of it.	14:24:40	20 Mr. Roberson says, "I am squeezing every dime out	14:28:52
21 (Whereupon, Deposition Exhibit 2838 is marked for	14:24:49	21 of SEA for margin advertising and partnership	14:28:55
22 Identification.)	14:24:49	22 ideas even though it may not appear so?"	14:28:58
23 MS. LIN: I am going to mark as Exhibit	14:24:49	23 A Yes.	14:29:00
24 2838, a document Bates Number beginning CC	14:24:51	24 Q Did Circuit City expect its vendors to	14:29:03
25 0572187.	14:24:55	25 squeeze themselves for margin advertising and	14:29:06
Page 123		Page 125	
1 BY MS. LIN:	14:25:03	1 partnership ideas?	14:29:08
2 Q You can familiarize yourself with this	14:25:04	2 MR. LAHAD: Objection, vague.	14:29:10
3 document for the moment. I am going to be asking	14:25:15	3 MR. GRALEWSKI: Objection to the form.	14:29:12
4 you about the first two pages.	14:25:17	4 THE WITNESS: I am not really sure that	14:29:14
5 A You want me to read only the first two	14:27:25	5 I can answer that one without laughing. We	14:29:18
6 pages?	14:27:28	6 expected them to act like they were.	14:29:23
7 Q Let me ask you some questions and if you	14:27:28	7 BY MS. LIN:	14:29:26
8 feel you need to look at more of the document	14:27:30	8 Q Following that sentence still on the	14:29:29
9 please let me know. Are you familiar with Danny	14:27:33	9 same page where Mr. Roberson says, "There is no	14:29:33
10 Caglin?	14:27:34	10 one at CC up to the CEO that can explain why CC	14:29:37
11 A Yes.	14:27:37	11 has to have such significantly higher margins and	14:29:41
12 Q And remind me, who is that?	14:27:38	12 programs than everyone else in America."	14:29:44
13 A Danny Caglin is a buyer for Circuit City	14:27:40	13 A Yes.	14:29:47
14 Stores.	14:27:42	14 Q Do you understand CC in that context to	14:29:48
15 Q Are you familiar with Clyde Robertson?	14:27:42	15 mean Circuit City?	14:29:51
16 A Roberson, yes.	14:27:45	16 A Yes.	14:29:51
17 Q Who is Mr. Roberson?	14:27:46	17 Q What do you think Mr. Roberson is	14:29:51
18 A In this capacity he is the national	14:27:48	18 saying?	14:29:53
19 account manager for Samsung Electronics.	14:27:50	19 MR. LAHAD: Calls for speculation.	14:29:55
20 Q Was Mr. Roberson ever employed by	14:27:56	20 THE WITNESS: I think he is basically	14:29:58
21 Circuit City?	14:27:59	21 saying that we are getting favorable	14:30:01
22 A Yes.	14:27:59	22 treatment.	14:30:05
23 Q Did you know him in his capacity as a	14:28:00	23 BY MS. LIN:	14:30:07
24 Circuit City employee?	14:28:03	24 Q In your experience does Circuit City	14:30:08
25 A Yes.	14:28:03	25 have significantly higher margins and programs	14:30:10

32 (Pages 122 - 125)

VERITEXT REPORTING COMPANY

212-267-6868

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516-608-2400

Page 126		Page 128	
1 than everyone else in America?	14:30:14	1 time?	14:33:41
2 A I do not know. I would have no way of	14:30:15	2 A No.	14:33:41
3 knowing.	14:30:17	3 Q Was circuit striving to avoid	14:33:45
4 Q Are you familiar with any of Circuit	14:30:18	4 promotional hell?	14:33:47
5 City's vendors ever expressing that they thought	14:30:20	5 MR. LAHAD: Objection, vague, lacks	14:33:51
6 Circuit City had higher margins than other	14:30:23	6 foundation.	14:33:52
7 companies in America?	14:30:26	7 THE WITNESS: I think he is trying to	14:33:57
8 MR. LAHAD: This document?	14:30:28	8 avoid promoting product that is not going to	14:33:59
9 MS. LIN: Yes.	14:30:29	9 be very profitable.	14:34:06
10 THE WITNESS: I was party to	14:30:31	10 (Whereupon, Deposition Exhibit 2840 is marked for	14:34:08
11 conversations where they would say, "Because	14:30:31	11 Identification.)	14:34:08
12 you have a trained sales force we give you	14:30:35	12 MS. LIN: You can put that exhibit	14:34:08
13 higher margins than someone else because you	14:30:39	13 aside. I am going to mark as Exhibit 2840, a	14:34:09
14 provide the ability to sell better goods,"	14:30:43	14 document beginning with Bates No. CC 0543314.	14:34:20
15 and they want those goods sold, and therefore	14:30:46	15 BY MS. LIN:	14:34:54
16 they are doing it.	14:30:49	16 Q If you could just familiarize yourself	14:34:54
17 But again as far as any conversations	14:30:53	17 briefly with the document and if you feel like you	14:34:55
18 about our cost versus another person that we	14:30:57	18 need more time, please just let me know.	14:34:55
19 were taught we did not discuss costs. Our	14:31:02	19 A If you are going to ask about a specific	14:35:01
20 costs, the other guy's cost, we talk about	14:31:07	20 sentence, I will read those, but I know what this	14:35:03
21 our own profitability.	14:31:11	21 document is, yes.	14:35:05
22 (Whereupon, Deposition Exhibit 2839 is marked for	14:31:12	22 Q So what is this document?	14:35:06
23 Identification.)	14:31:12	23 A This is a document to the president of	14:35:07
24 MS. LIN: Put that back to the side. I	14:31:22	24 the company, and to the head of merchandising and	14:35:10
25 am going to mark as Exhibit 2839 a document	14:31:37	25 a copy to another district merchant basically	14:35:16
Page 127		Page 129	
1 beginning with Bates No. CC 0569329.	14:31:41	1 giving them the behind the scenes viewpoint of	14:35:22
2 THE WITNESS: I have read it.	14:32:40	2 strategic issues before Circuit City meets with	14:35:27
3 BY MS. LIN:	14:32:41	3 Thomson.	14:35:32
4 Q Focusing your attention on the final	14:32:42	4 So senior management, we call this the	14:35:34
5 sentence, do you know what Mr. Scholclapper means	14:32:44	5 white paper before we would go to visit a vendor.	14:35:37
6 when he writes that, "The program is a sort of	14:32:45	6 These are pretty standard type of things. The	14:35:40
7 purgatory that denies both the glories of margin	14:32:48	7 third and fourth page of this is written by me.	14:35:55
8 heaven as well as the costs needed to descend into	14:32:51	8 Q Focused on the video and camcorder.	14:36:01
9 promotional health?" <i>hell</i>	14:32:52	9 A Yes, you see our camcorder portion, they	14:36:04
10 MR. LAHAD: Calls for speculation.	14:32:55	10 do not say that it is written by me, but it is	14:36:09
11 MR. GRALEWSKI: Objection, form.	14:32:58	11 written by me.	14:36:11
12 THE WITNESS: I would assume he means	14:33:00	12 Q What generally was the purpose of this	14:36:12
13 that he does not view this as a good program.	14:33:02	13 type of white paper?	14:36:14
14 BY MS. LIN:	14:33:06	14 A Because you were going in and having	14:36:15
15 Q Do you know what Circuit City considered	14:33:06	15 very senior level conversations you wanted to make	14:36:19
16 to be margin heaven?	14:33:09	16 sure that your senior management knew what the	14:36:24
17 MR. LAHAD: Lacks foundation, calls for	14:33:13	17 opportunities and risks were for that meeting and	14:36:27
18 speculation.	14:33:15	18 because of these meetings you might have a dinner	14:36:32
19 THE WITNESS: Not heaven, but good	14:33:20	19 and somebody might bring up one of these issues,	14:36:36
20 margins would be margin that are above your	14:33:24	20 or whatever, you wanted everybody who was going to	14:36:39
21 average margins and bad margins would be	14:33:28	21 be at the meeting to understand what's going on so	14:36:42
22 those below your average margins.	14:33:30	22 that if they have the opportunity to reinforce, to	14:36:47
23 BY MS. LIN:	14:33:33	23 lessen the risk and increase the opportunities,	14:36:52
24 Q Do you know what Circuit City's average	14:33:33	24 that they can help the buyer do so.	14:36:54
25 margins were on CRT finished products at this	14:33:37	25 This is basically the buyer telling	14:36:57

33 (Pages 126 - 129)

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

Page 130		Page 132	
1 senior management what is going on and as we all	14:37:01	1 to sell both, it doesn't make sense because	14:39:38
2 go in to meet with them, want you to know what is	14:37:04	2 it looks like he is going to keep himself	14:39:40
3 going on.	14:37:07	3 from selling his own better product.	14:39:43
4 Q I want to direct your attention to the	14:37:08	4 BY MS. LIN:	14:39:47
5 second bullet on page 2 that begins, "Thomson	14:37:09	5 Q Was it harmful to Circuit City if its	14:39:47
6 continues," what do you understand this point, the	14:37:13	6 vendors positioned their products well below the	14:39:50
7 second bullet on page 2 to be saying?	14:37:19	7 market price used by other vendors of similar	14:39:53
8 MR. GRALEWSKI: Objection, form.	14:37:24	8 products?	14:39:57
9 THE WITNESS: Basically he is saying	14:37:31	9 MR. LAHAD: Objection, vague.	14:39:57
10 that Thomson is creating a disruption in the	14:37:33	10 THE WITNESS: I could not give a yes or	14:40:04
11 marketplace that will have a ripple effect	14:37:36	11 no answer to that. It might be advantageous	14:40:06
12 and cost us money.	14:37:40	12 to Circuit City for the vendor to position	14:40:10
13 BY MS. LIN:	14:37:41	13 their pricing below others if we are only	14:40:13
14 Q How is Thomson creating a disruption in	14:37:45	14 ones who carry it.	14:40:17
15 the marketplace?	14:37:48	15 BY MS. LIN:	14:40:18
16 A Because they are pricing their product	14:37:48	16 Q What if Circuit City is not the only one	14:40:18
17 well below all other brands with similar featured	14:37:51	17 carrying that product?	14:40:21
18 product and by doing so they are reducing the	14:37:56	18 A It might be advantageous still because	14:40:21
19 overall average retail for everything so you don't	14:38:02	19 it might produce very high margins and increase	14:40:25
20 have as much profit dollars because of that.	14:38:06	20 sales, but it could also be a disadvantage in that	14:40:28
21 Q Did Circuit City consider that reduction	14:38:12	21 nobody sells anymore, but everybody sells it for	14:40:32
22 by Thomson to be unfavorable?	14:38:15	22 less.	14:40:36
23 MR. LAHAD: Objection, vague.	14:38:18	23 Q If everybody is selling a specific type	14:40:42
24 MR. GRALEWSKI: Objection, form, to this	14:38:20	24 of CRT finished product for less that could reduce	14:40:46
25 question and the prior.	14:38:22	25 Circuit City's profits?	14:40:49
Page 131		Page 133	
1 THE WITNESS: He says that he doesn't	14:38:25	1 MR. LAHAD: Misstates the testimony.	14:40:52
2 understand why you would do something that	14:38:28	2 THE WITNESS: Yes.	14:40:53
3 reduces both their own profits and the	14:38:30	3 BY MS. LIN:	14:40:53
4 profits to retailers so he is saying that it	14:38:33	4 Q Did Circuit City prefer for its CRT	14:40:57
5 doesn't make sense.	14:38:37	5 finished products to sell at higher prices?	14:40:58
6 BY MS. LIN:	14:38:38	6 A Circuit City has to be competitive.	14:41:04
7 Q Would you agree that Thomson reducing	14:38:38	7 That is his first priority. The second priority	14:41:08
8 its prices in that fashion doesn't make sense?	14:38:41	8 is to sell as a high an average retail product as	14:41:11
9 MR. GRALEWSKI: Objection, form.	14:38:45	9 it can with the highest average margin.	14:41:14
10 THE WITNESS: I would have to know more	14:38:47	10 Anything that decreases the average	14:41:19
11 about all of the other circumstances, but	14:38:49	11 retail of a product is a risk, however, if it	14:41:22
12 typically, there is some consumer acceptance	14:38:52	12 increases sales enough to offset the decrease the	14:41:28
13 that this product is worth that amount of	14:39:02	13 lost margin by or loss profit opportunity, then	14:41:34
14 dollars and the people that are competing for	14:39:07	14 that is advantageous.	14:41:38
15 those sales are generally going to be around	14:39:10	15 MS. LIN: Let's go ahead and take a	14:41:40
16 that price.	14:39:12	16 short break to change the tape.	14:41:40
17 To position all of your product below	14:39:15	17 THE VIDEOGRAPHER: The time is	14:41:42
18 the price, and also trying to sell because	14:39:17	18 approximately 2:41. This is the end of tape	14:41:44
19 they have the Thomson brand, they are trying	14:39:24	19 number 2 and we are off the record.	14:41:46
20 to sell the Thomson brand at a higher price.	14:39:26	20 (After a short recess.)	14:41:47
21 That's the part that does not make	14:39:30	21 THE VIDEOGRAPHER: This is the beginning	14:48:59
22 sense. If it was just trying to sell one	14:39:29	22 of tape 3. The time is approximately 2:48	14:49:07
23 and he is going to grab all the market	14:39:33	23 p.m. and we are back on the record.	14:49:13
24 share, kind of makes sense.	14:39:35	24 BY MS. LIN:	14:49:15
25 But in this context where he is trying	14:39:37	25 Q Mr. Deason, can I have you read to	14:49:15

34 (Pages 130 - 133)

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212-267-6868

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516-608-2400

Page 134		Page 136	
1 yourself the first bullet on page 2, Exhibit 2840.	14:49:18	1 THE WITNESS: Yes.	14:52:06
2 What do you understand that bullet to be	14:49:50	2 THE REPORTER: Thank you.	14:52:06
3 discussing?	14:49:51	3 BY MS. LIN:	14:52:06
4 MR. LAHAD: Calling for speculation and	14:49:53	4 Q Are you aware of Circuit City learning	14:52:09
5 lacks foundation.	14:49:54	5 about CRT finished product manufacturers cost of	14:52:12
6 THE WITNESS: He is discussing that the	14:49:56	6 manufacturing in other contexts besides this	14:52:15
7 entry level price products that Thomson is	14:50:02	7 document we just looked at?	14:52:17
8 offering are not at a competitive cost and	14:50:05	8 MR. LAHAD: Objection, vague, misstates	14:52:20
9 that others have that product and perhaps we	14:50:15	9 the testimony.	14:52:21
10 could leverage their more senior product	14:50:24	10 MR. GRALEWSKI: Objection to form, to	14:52:22
11 since we are going to be buying the other	14:50:28	11 this question and the prior question.	14:52:25
12 product from them.	14:50:30	12 THE WITNESS: We would not know the cost	14:52:28
13 It might become more important to other	14:50:32	13 of manufacturing of the vendor and to some	14:52:31
14 people. He says it is not his goal but it	14:50:34	14 degree we might not care. What we care about	14:52:37
15 might happen.	14:50:37	15 is whether the costs they give us is	14:52:42
16 BY MS. LIN:	14:50:38	16 competitive.	14:52:46
17 Q Does Circuit City generally have the	14:50:38	17 Now, am I familiar with vendors	14:52:47
18 ability to leverage other vendors' product	14:50:40	18 complaining that their costs are high and	14:52:52
19 offerings in order to obtain better CRT finished	14:50:43	19 that that makes their life tough, yes.	14:52:56
20 product prices?	14:50:47	20 BY MS. LIN:	14:52:58
21 MR. LAHAD: Objection, vague,	14:50:48	21 Q Were there times during the relevant	14:53:02
22 MR. GRALEWSKI: Objection, form,	14:50:49	22 period when Circuit City could not purchase as	14:53:04
23 THE WITNESS: I would bring that down to	14:50:52	23 many CRT finished products as it was seeking to?	14:53:08
24 he's got some entry level product that he	14:51:00	24 A I think that is highly likely. As new	14:53:12
25 needs to buy and one guy's cost are higher	14:51:02	25 products are introduced quite often the supply is	14:53:18
Page 135		Page 137	
1 than the other guy's cost as far as quoted to	14:51:07	1 not adequate, and so for example, as I used	14:53:24
2 him, so he is choosing between that.	14:51:09	2 earlier, when the 40 inch CRT was introduced, it	14:53:27
3 The rest of this discussion talks about	14:51:13	3 would be very likely that we were not getting all	14:53:32
4 if I am having to buy that product from	14:51:17	4 of them that we wanted to get, but I don't again	14:53:35
5 these guys, I might want to buy the better	14:51:19	5 know of a specific case of that.	14:53:39
6 product from these guys too.	14:51:23	6 Q The 40-inch CRT you are using as an	14:53:42
7 BY MS. LIN:	14:51:24	7 example, but not necessarily a true example?	14:53:45
8 Q Did Circuit City typically learn about	14:51:27	8 A Correct. Anything that is new supply	14:53:48
9 CRT finished product manufacturers manufacturing	14:51:30	9 tends to lag demand.	14:53:55
10 cost during its purchase negotiations?	14:51:34	10 (Whereupon, Deposition Exhibit 2841 is marked for	14:53:59
11 A No.	14:51:37	11 Identification.)	14:53:59
12 Q Are you aware, other than the document	14:51:37	12 MS. LIN: I am going to mark as Exhibit	14:54:18
13 you have just read, Exhibit 2840, of Circuit City	14:51:42	13 2841 a document Bates numbered CC 0534111.	14:54:20
14 learning about CRT finished product manufacturers	14:51:46	14 BY MS. LIN:	14:54:30
15 prices as part of the negotiation process?	14:51:49	15 Q Can you describe to me what this Exhibit	14:54:30
16 MR. LAHAD: Objection, misstates	14:51:52	16 2841 appears to you to be?	14:55:04
17 previous testimony.	14:51:54	17 A It appears to be an update from Danny	14:55:06
18 THE WITNESS: Prices, again, I don't	14:51:55	18 Caglin, the buyer, to Andrew Scholclapper who is	14:55:10
19 know. Ask me again. I am sorry.	14:51:57	19 probably his senior buyer or I am not sure of the	14:55:13
20 BY MS. LIN:	14:51:59	20 exact title at the time, telling him about what is	14:55:17
21 Q Sure. The bullet we just read in	14:51:59	21 going on with their discussions with Hitachi.	14:55:25
22 Exhibit 2840 is discussing the vendor's costs of	14:52:02	22 Q What concerns is Mr. Caglin raising	14:55:33
23 manufacturing?	14:52:03	23 about Hitachi?	14:55:35
24 A (Non-verbalized response.)	14:52:06	24 MR. LAHAD: The document speaks for	14:55:38
25 THE REPORTER: Is that a yes?	14:52:06	25 itself.	14:55:40

35 (Pages 134 - 137)

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212-267-6868

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516-608-2400

Page 138		Page 140	
1	MR. GAWLEY: Assumes facts, speculative, 14:55:43	1	it makes it say, "If you do not do this, we 14:58:02
2	lacks foundation. 14:55:43	2	will do that." 14:58:05
3	THE WITNESS: He is basically saying 14:55:52	3	What they are discussing is the fact 14:58:07
4	that the costs, that the margin on the 14:55:55	4	that this product is not going to sell as 14:58:08
5	Hitachi product is going to go down and that 14:55:58	5	much and it is not going to be as 14:58:10
6	it is not going to be as competitive to other 14:56:03	6	profitable. 14:58:13
7	product. 14:56:06	7	If it is not going to sell as much and 14:58:14
8	BY MS. LIN: 14:56:06	8	it is not going to be profitable, then you 14:58:15
9	Q Can you read Mr. Scholclapper's 14:56:09	9	don't advertise it as often and you don't 14:58:18
10	response? 14:56:11	10	carry it in as many stores and they need to 14:58:20
11	A "Thanks for the update." Well, there 14:56:11	11	understand that because they should not be 14:58:22
12	are a bunch of typos and so I will read it as what 14:56:13	12	surprised by that. 14:58:24
13	I think he is saying, which is, "If you have not 14:56:18	13	BY MS. LIN: 14:58:27
14	done so already, please make sure Hitachi is aware 14:56:23	14	Q But generally speaking, not just in the 14:58:27
15	of your planned actions pulling in front ads, 14:56:27	15	example of Exhibit 2814, Circuit City could enact 14:58:30
16	potentially reducing store counts. They need to 14:56:28	16	consequences to CRT finished product vendors that 14:58:37
17	understand the consequences of their decisions." 14:56:33	17	did not move their suggested retail prices? 14:58:39
18	Q What do you understand Mr. Scholclapper 14:56:35	18	MR. LAHAD: Vague. 14:58:46
19	to be saying? 14:56:37	19	MR. GRALEWSKI: Objection, form. 14:58:47
20	MR. LAHAD: Lacks foundation, calls for 14:56:39	20	THE WITNESS: The consequences are going 14:58:51
21	speculation. 14:56:41	21	to happen because, in general, if people 14:58:55
22	THE WITNESS: I would take it that he is 14:56:45	22	don't react to the marketplace which is what 14:59:01
23	saying that if the product is not going to be 14:56:46	23	this is talking about, then their product is 14:59:04
24	as competitive and if it is not going to 14:56:49	24	going to not sell, so to say that there are 14:59:08
25	deliver as much margin, then we don't want to 14:56:52	25	consequences from Circuit City, the 14:59:16
Page 139		Page 141	
1	sell as many. 14:56:55	1	consequence is to Circuit City that the 14:59:19
2	BY MS. LIN: 14:56:56	2	product is not going to sell, if the retail 14:59:21
3	Q So there were consequences for CRT 14:56:56	3	is going to go down, but the margin is going 14:59:26
4	finished product vendors who did not accommodate 14:56:59	4	to down too, then there is impact to Circuit 14:59:27
5	Circuit City's expected margins? 14:57:03	5	City on their profit. 14:59:32
6	MR. LAHAD: Objection, misstates the 14:57:06	6	I think that that's as clear as I can 14:59:35
7	testimony. 14:57:07	7	answer it. We are not saying, "If you don't 14:59:37
8	THE WITNESS: He's saying that they are 14:57:07	8	do this," I mean, they can choose do 14:59:43
9	not going to end up selling as much product 14:57:08	9	whatever they want, but then it is not going 14:59:48
10	and so therefore we're going to have to do 14:57:12	10	to sell, so we are going to stop buying it. 14:59:50
11	these things in reaction to that and that 14:57:14	11	14:59:54
12	they need to know that. 14:57:19	12	Q If a CRT finished product vendor 14:59:55
13	BY MS. LIN: 14:57:20	13	increased its costs, would Circuit City change the 15:00:07
14	Q Circuit City could pull planned ads from 14:57:25	14	retail price of the finished product in response? 15:00:11
15	CRT finished product vendors' product if those 14:57:28	15	A They may. If the manufacturer's 15:00:15
16	vendors refused to reduce their suggested 14:57:33	16	suggested retail price changed, then we are likely 15:00:18
17	advertised retail prices? 14:57:36	17	to, and if it did not, we are unlikely to. 15:00:25
18	MR. LAHAD: Misstates testimony, lacks 14:57:38	18	Q Do you recall any specific examples of 15:00:32
19	foundation. 14:57:40	19	15:00:34
20	MS. LIN: It's a question. I am not 14:57:41	20	A No. 15:00:34
21	restating his testimony. 14:57:43	21	Q To the extent its cost was increased, 15:00:40
22	MR. LAHAD: To the extent that you are 14:57:44	22	would -- 15:00:42
23	relying on testimony, I think you're 14:57:44	23	A I'm sorry, I have got to correct myself. 15:00:43
24	mistaken. 14:57:48	24	The previous deposition, I was shown a letter 15:00:46
25	THE WITNESS: I think the way you stated 14:57:51	25	where somebody had increase in costs. 15:00:50

36 (Pages 138 - 141)

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212-267-6868

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516-608-2400

Page 142		Page 144	
1 Q The previous deposition you are	15:00:55	1 I was trying to clarify, putting aside a margin	15:03:34
2 referring to the LCD case?	15:00:56	2 percentage, the dollar amount at which a CRT	15:03:36
3 A LCD, but it was not for CRT product	15:00:58	3 finished product cost to Circuit City, would that	15:03:39
4 Q You are not aware of any instances this	15:01:00	4 be the same dollar amount at which Circuit City	15:03:42
5 which CRT product prices were increased?	15:01:03	5 would change its retail price to consumers?	15:03:45
6 A I am not aware.	15:01:06	6 A Cost and our selling price still exist	15:03:49
7 MR. GRALEWSKI: Can I have the court	15:01:17	7 independently. You make the pricing decision	15:03:58
8 reporter read back the last question and	15:01:18	8 based on what is competitive.	15:04:01
9 answer?	15:01:20	9 If the vendor gives you a \$20 reduction	15:04:04
10 (Whereupon the record was read.)	15:01:20	10 in cost, but everybody is selling this at the same	15:04:07
11 MR. LAHAD: Did you mean prices or	15:01:34	11 price that they always sold it for, and you are	15:04:11
12 costs?	15:01:35	12 selling it at that and it is competitive, then you	15:04:14
13 MS. LIN: I will keep prices. But why	15:01:38	13 may take the money.	15:04:18
14 not ask the question as to costs.	15:01:41	14 It is profitable.	15:04:20
15 BY MS. LIN:	15:01:43	15 If the vendor has said, and this is the	15:04:21
16 Q Are you aware of any instances --	15:01:43	16 more likely case where you have got a cost	15:04:24
17 MR. LAHAD: Did you understand that	15:01:44	17 reduction, "If you have a price protection, more	15:04:27
18 question to be prices or costs?	15:01:45	18 likely it used to be a \$349 manufactured suggested	15:04:29
19 THE WITNESS: I understood it to be	15:01:47	19 retail, it is now going to be \$299 suggested	15:04:32
20 costs. I am sorry.	15:01:48	20 retail and here is your new cost."	15:04:36
21 BY MS. LIN:	15:01:49	21 Q Did Circuit City use any type of	15:04:47
22 Q No, that's okay.	15:01:49	22 benchmark pricing in its prices charged to	15:04:49
23 A My answer was that it was based on our	15:01:51	23 consumers for instance tending to end products at	15:04:53
24 cost going up.	15:01:55	24 99 cents?	15:04:55
25 Q You are not aware of any instances in	15:01:56	25 A Yes.	15:04:56
Page 143		Page 145	
1 which Circuit City's costs to purchase CRT	15:01:57	1 Q And how did that benchmark pricing work?	15:04:57
2 finished products went up?	15:02:01	2 A The 99 cent was the standard ending for	15:05:00
3 A That is correct.	15:02:02	3 everything that you sold in the sort of the normal	15:05:05
4 Q If there was a decrease in Circuit	15:02:12	4 course of business.	15:05:11
5 City's costs to acquire a specific CRT finished	15:02:21	5 We had other endings that meant things,	15:05:12
6 products, would Circuit City decrease the price	15:02:23	6 and I am probably going to get these wrong, but I	15:05:15
7 charged to the customer by that same amount?	15:02:30	7 will use them as the examples.	15:05:19
8 A Most likely not. We would reposition	15:02:33	8 97 cent, might say, "That is an item	15:05:21
9 price based on change of the manufacturer's	15:02:45	9 that was on sale," the 98 cent might mean that	15:05:23
10 suggested retail price would be the primary reason	15:02:47	10 "that is a floor sample," and the 95 cent, and I	15:05:28
11 for us to reposition the price that we are selling	15:02:50	11 am getting some of these, right, meant that it was	15:05:34
12 the product at.	15:02:53	12 a damaged product.	15:05:38
13 And furthermore, if you reduce the price	15:02:57	13 Q If Circuit City decreased the price of a	15:05:56
14 by \$20, and you reduce the cost by \$20, you	15:03:00	14 particular CRT finished product, would that have	15:06:00
15 actually don't have the same margin. The math	15:03:04	15 an affect on other CRT finished products in	15:06:03
16 doesn't work that way.	15:03:08	16 Circuit City's lineup at the time?	15:06:06
17 Q Would Circuit City typically move the	15:03:11	17 MR. LAHAD: Objection, vague, as to	15:06:08
18 price to the consumer by the same amount at which	15:03:17	18 affect.	15:06:11
19 Circuit City's cost to acquire the CRT finished	15:03:21	19 MR. GRALEWSKI: Objection, form.	15:06:11
20 product moved?	15:03:25	20 THE WITNESS: What do you mean by	15:06:13
21 MR. GRALEWSKI: Objection, form.	15:03:26	21 affect?	15:06:14
22 THE WITNESS: I believe I just answered	15:03:28	22 BY MS. LIN:	15:06:16
23 that.	15:03:30	23 Q If a particular CRT finished product	15:06:17
24 BY MS. LIN:	15:03:31	24 price decreases would that lead Circuit City to	15:06:23
25 Q I thought you tagged it to margins, so I	15:03:32	25 change the prices of any other CRT finished	15:06:26

37 (Pages 142 - 145)

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212-267-6868

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516-608-2400

Page 146	Page 148
1 products it was selling at that time? 15:06:29	1 was significantly going to change sort of what 15:09:15
2 A It might. 15:06:32	2 they have been trained to do or what they have 15:09:22
3 Q Why's that? 15:06:34	3 been selling. 15:09:24
4 A Because the other products might stop 15:06:35	4 Q Were price changes, so that is price 15:09:26
5 selling. 15:06:38	5 charged to consumers, implemented across all 15:09:29
6 Q Would a price decrease in a particular 15:06:43	6 Circuit City retail stores at the same time? 15:09:34
7 CRT finished product prompt Circuit City to reduce 15:06:45	7 A Like 99.9 percent of the time they were. 15:09:36
8 prices of its other CRT finished products for 15:06:49	8 There were exceptions where you would say in this 15:09:40
9 sale? 15:06:52	9 marketplace that price is not going to be 15:09:43
10 MR. LAHAD: Asked and answered. 15:06:53	10 competitive and so you would put a different price 15:09:46
11 THE WITNESS: Yes, I was actually 15:06:54	11 down. 15:09:49
12 listening to see what was different. I don't 15:06:57	12 Q Were the same prices charged on Circuit 15:09:52
13 hear anything different in the question. 15:06:59	13 City's website as it charged on its retail stores 15:09:59
14 Maybe if you restate it, I can answer you. 15:07:05	14 for CRT finished products? 15:10:02
15 BY MS. LIN: 15:07:12	15 A The everyday pricing would have been the 15:10:05
16 Q We were saying that if a price decreased 15:07:12	16 same, however you could have different promotions. 15:10:09
17 of one product, Circuit City might change its 15:07:14	17 It could be on sale in the stores and not be on 15:10:14
18 prices of other products? I want to clarify, 15:07:16	18 sale on the web or vice versa. 15:10:17
19 would it change them to go down? 15:07:18	19 Q Was it the buyers that determined the 15:10:20
20 A Yes, if the product was not selling 15:07:24	20 web pricing as well? 15:10:23
21 because the other product had gone down in price 15:07:26	21 A The buyers determined the every day 15:10:24
22 then it would go down also. 15:07:31	22 pricing, yes. 15:10:27
23 BY MS. LIN: 15:07:33	23 Q The size of its inventory of CRT 15:10:28
24 Q A decrease in price of one CRT product 15:07:34	24 finished products impact Circuit City's prices it 15:10:30
25 was unlikely to cause Circuit City to increase the 15:07:35	25 charged to consumers to purchase these products? 15:10:34
Page 147	Page 149
1 price of a different CRT product, is that right? 15:07:39	1 A Yes. 15:10:38
2 MR. LAHAD: Misstates the testimony. 15:07:41	2 Q How so? 15:10:38
3 THE WITNESS: Yes. 15:07:43	3 A If we had an excess amount of inventory, 15:10:39
4 MR. LAHAD: I am sorry, did you say was 15:07:53	4 then we might reduce the price to the consumer to 15:10:41
5 then likely or was unlikely? 15:07:53	5 increase sales. 15:10:45
6 MS. LIN: Unlikely. 15:07:55	6 If we had a shortage of inventory, we 15:10:47
7 BY MS. LIN: 15:07:56	7 may increase costs to the consumer because we are 15:10:49
8 Q If a price change was to be implemented 15:08:03	8 going to sell all that we own. 15:10:52
9 on a particular CRT finished product, how did that 15:08:07	9 Q Would Circuit City sometimes buy more 15:10:55
10 process work? 15:08:11	10 inventory than usual if it felt that it was 15:10:58
11 A The buyers support team which had 15:08:12	11 getting a good price on a CRT finished product? 15:10:59
12 various names, it could be a category support, or 15:08:21	12 MR. LAHAD: Vague, lacks foundation. 15:11:03
13 a product manager, or a product specialist, the 15:08:25	13 THE WITNESS: I am trying to sort of 15:11:17
14 buyer would create the basic form that said, "The 15:08:28	14 process the then usual. Yes, we would, and 15:11:17
15 new price of this, we want to price our stores to 15:08:35	15 there's a difference in culture in about 15:11:24
16 this starting at this date," and that is all that 15:08:39	16 1995, 1996, 1997, that sort of stopped at the 15:11:28
17 would have to be done is that it would key in go 15:08:44	17 beginning of this where the buyers could buy 15:11:33
18 out to all the stores. 15:08:47	18 a bulk of product and sit on it for a while, 15:11:38
19 If there was a cost change at the same 15:08:49	19 if they got an incredible deal. 15:11:41
20 time that is handled differently. 15:08:53	20 But as our supply chain got more 15:11:46
21 Q You said was a cost change to acquire a 15:08:58	21 sophisticated we were not allowed to do 15:11:51
22 CRT finished product, would that information be 15:09:01	22 that, and so for the majority of this period 15:11:53
23 related to the retail stores? 15:09:03	23 of time, I would estimate that over 90 15:11:55
24 A That information is available to them, 15:09:07	24 percent time that we are talking about here 15:12:00
25 but it would not be communicated to them unless it 15:09:10	25 the buyer could not buy in excess in that 15:12:03

38 (Pages 146 - 149)

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

	Page 150		Page 152
1 way.	15:12:09	1 pricing. They were able to control their reaction	15:14:46
2 BY MS. LIN:	15:12:10	2 to competitors' pricing.	15:14:50
3 Q Do you know why Circuit City changed its policy with respect to whether buyers can purchase excess CRT finished product inventory?	15:12:11 15:12:14 15:12:16	3 Q Did someone at Circuit City determine which products would be in that category of products whose prices might change in reaction to competitor pricing?	15:14:52 15:14:55 15:14:58
6 A Reduce risk.	15:12:19	7 A Yes.	15:15:01
7 Q Was that because Circuit City expected the prices of CRT finished products to decline?	15:12:23 15:12:24	8 Q How did that work?	15:15:02
9 A No, it is because any product that you buy has the risk of suddenly being not profit or not competitive and now you own it and so it doesn't matter that it was CRTs. Just any mass product.	15:12:27 able 15:12:31 15:12:36 15:12:42 15:12:46	9 A The buyers and other senior management in merchandising would identify the key categories that required reaction and CRTs would have always been in that category because they are hardware categories with significant pricing. Whereas, something like a camera bag where they carried 50 of them, and they cost \$19, wouldn't be.	15:15:03 15:15:07 15:15:12 15:15:16 15:15:21 15:15:25 15:15:32
14 Q Did individual Circuit City retail stores have the authority to change the sales prices of CRT finished products?	15:12:52 15:12:54 15:12:57	16 Q Were all CRT finished products subject to price changes based on competitor prices?	15:15:35 15:15:39
17 A They could under very strict guidelines and at some periods of time they were not allowed to do so at all.	15:13:00 15:13:04 15:13:07	18 MR. LAHAD: Vogue.	15:15:44
20 Q Do you know what time periods individual stores were not allowed to change CRT finished product prices?	15:13:13 15:13:16 15:13:18	19 THE WITNESS: Right. It would vary based on the time that we are talking about here.	15:15:44 15:15:46 15:15:50
23 A These type of decisions to give you an example of a time when they were not allowed to change them at all, I remember a Christmas, I	15:13:20 15:13:27 15:13:30	22 As CRT was the largest part of television probably at the beginning of the cycle, I suspect all CRT was involved.	15:15:52 15:15:55 15:15:58
		25 At the end, as CRT was not as visible	15:16:01
	Page 151		Page 153
1 I don't know which Christmas, where we said, "This date on, no price changes. No reactions."	15:13:35 15:13:38	1 and wasn't advertised as much, wasn't as high priced, or et cetera, then I am sure that there were exceptions that said we are only going to do the ones above a certain price or certain size or something like that and it may have even been excluded.	15:16:08 15:16:11 15:16:15 15:16:17 15:16:20 15:16:21
3 Q So from some Christmas going forward individual stores were no longer allowed to change their CRT finished product prices, am I understanding you right?	15:13:54 15:13:56 15:13:59 15:14:01	7 But television in general was our number one business and so in general we were very competitive on television.	15:16:24 15:16:28 15:16:31
7 MR. LAHAD: Misstates the testimony.	15:14:02	10 BY MS. LIN:	15:16:34
8 THE WITNESS: They are not allowed to change any prices.	15:14:02 15:14:04	11 Q Was Circuit City offering similar ability to its retail stores to change their prices in reaction to competitors in CRT monitor sales?	15:16:35 15:16:37 15:16:40 15:16:44
10 BY MS. LIN:	15:14:05	15 A We were a little more careful with our computer product because the overall profitability of computers is typically lower than other products and the visibility was a little bit lower.	15:16:46 15:16:49 15:16:55 15:17:01 15:17:04
11 Q Specific to that one day or going forward?	15:14:05 15:14:08	20 Having said that, I am sure that there were times when they were included, but it's not the type of category that is dominant for Circuit City.	15:17:05 15:17:07 15:17:11 15:17:16
13 A For a short period of time, like the final three weeks of the year or the final three weeks before Christmas.	15:14:08 15:14:10 15:14:13	24 I would say in that case it is probably the opposite, that most of the time they wouldn't	15:17:19 15:17:22
16 The only prices by the way that they were allowed to change were a specific group of product that we said, "These products were going to compete on. You will compete with certain other retailers and if they are at this price in print, for example, then you will price yours while that ad ran, and when the ad is over, you put it back up."	15:14:15 15:14:17 15:14:20 15:14:24 15:14:28 15:14:32 15:14:36 15:14:39		
24 They were not able to control, what I have been referring to, as their every day	15:14:40 15:14:43		

39 (Pages 150 - 153)

VERITEXT REPORTING COMPANY

212-267-6868

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516-608-2400

	Page 154	Page 156	
1 have been included.	15:17:26	1 I was involved with highly competitive	15:20:38
2 (Whereupon, Deposition Exhibit 2842 is marked for	15:17:26	2 marketplaces, many of these highly competitive	15:20:42
3 Identification.)	15:17:26	3 type environments, the competitor would price at	15:20:52
4 MS. LIN: I am going to mark a document	15:17:34	4 one price, but as soon as you said hello they	15:20:57
5 beginning Bates No. CC 0389749 as Exhibit	15:17:36	5 would offer you a lower price, and so by being	15:21:00
6 2842.	15:17:42	6 priced at one price and not being aware of that	15:21:04
7 BY MS. LIN:	15:18:17	7 and not having any sort of reaction to that we	15:21:07
8 Q Are you familiar with the manager's	15:18:17	8 were losing sales.	15:21:10
9 special price program referenced in Exhibit 2842?	15:18:19	9 We were particularly losing it for very	15:21:12
10 A This is a reminder that there is such a	15:18:24	10 expensive television and this is Big Screen which	15:21:18
11 program and looking at this is a reminder that	15:18:26	11 typically for Circuit City is talking about	15:21:21
12 there is such a program existed. I was not	15:18:29	12 projections sets.	15:21:24
13 actively involved in it.	15:18:32	13 It is talking about the various types of	15:21:26
14 BY MS. LIN:	15:18:34	14 projection, the type of sets, and typically, would	15:21:31
15 Q Do you know how the manager special	15:18:34	15 not be CRT unless it was a 40 inch or something	15:21:32
16 price program worked?	15:18:36	16 that was included.	15:21:36
17 A No.	15:18:37	17 This is primarily about any product that	15:21:37
18 Q Looking page 2, there is a reference to	15:18:39	18 was \$2,000 to \$3,000, and they would have a drop	15:21:41
19 a low-price guaranty. Do you know what Circuit	15:18:46	19 price that was significant.	15:21:44
20 City's low price guaranty was?	15:18:49	20 So it's a \$3,000 product and you say,	15:21:46
21 A Yes.	15:18:50	21 "hello," and it now \$2,800 and we don't get the	15:21:49
22 Q What was that?	15:18:51	22 sale.	15:21:54
23 A We would match competitors advertised	15:18:53	23 That is what the manager's special	15:21:55
24 pricing, so that we would sell you the product at	15:18:58	24 pricing was created to try to combat was how do we	15:21:58
25 the price that competitors advertised it at, and	15:19:00	25 deal with that because we were losing sales.	15:22:03
	Page 155	Page 157	
1 if you bought the product from us, and then the	15:19:04	1 Q Would you turn to the next page.	15:22:12
2 product was advertised for less, we would refund	15:19:08	2 A It does say Big Tube, by the way, on	15:22:14
3 the difference between what you paid and what the	15:19:11	3 that same page. There is some specific Big Tube	15:22:18
4 ad price was plus 10 percent, the difference.	15:19:15	4 in here and Tube would have been CRT.	15:22:21
5 Q Do you know when that low-price guaranty	15:19:19	5 Q Thank you. So on the page ending Bates	15:22:24
6 program was in place?	15:19:21	6 No. 57, will you read to yourself the paragraph	15:22:24
7 A Long before this period of time that we	15:19:24	7 beginning with, "Let me take a moment."	15:22:31
8 are talking about. It goes back to my beginning.	15:19:28	8 A 57? Read it to myself?	15:22:38
9 There was a low-price program when I started at	15:19:31	9 Q Yes, just familiarize yourself with that	15:22:48
10 Circuit City in 1980.	15:19:34	10 paragraph. Do you see where this training	15:22:50
11 Q Was that program when you started the	15:19:36	11 document says, "We shop other retailers as	15:23:19
12 same as the low-price guaranty program in place in	15:19:38	12 customers on a regular basis and the prices you	15:23:21
13 1996?	15:19:44	13 see here are their consistent final drop prices	15:23:25
14 A I believe so, but there were changes to	15:19:46	14 they give us."	15:23:28
15 that low-price program sometime during this	15:19:48	15 A Yes.	15:23:28
16 period.	15:19:54	16 Q What does that mean?	15:23:29
17 Q I direct your attention to the page	15:20:05	17 A We shop other retailer's customers on a	15:23:30
18 ending in Bates Number 56. There is a little	15:20:07	18 regular basis. I don't mean to be smart, but	15:23:33
19 easel in the left hand margin that says,	15:20:20	19 that's what it means is that we go out like if we	15:23:36
20 "Anticipate all customers shopping in a drop price	15:20:22	20 were a customer to try to buy the product to find	15:23:41
21 environment." Do you know what that term "drop	15:20:26	21 out what other guy is selling it for.	15:23:43
22 price environment" means?	15:20:27	22 Q So the final drop price would be	15:23:46
23 A That is actually a remainder of what the	15:20:29	23 discussing with the other retailer what lower than	15:23:49
24 manager's specials program was created for.	15:20:32	24 sticker price a buyer could receive?	15:23:53
25 Going back to one of my positions where	15:20:35	25 MR. LAHAD: Misstates the testimony.	15:23:57

40 (Pages 154 - 157)

VERITEXT REPORTING COMPANY

212-267-6868

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516-608-2400

Page 158		Page 160		
1 THE WITNESS:	Right.	15:23:59	1 Q Did Circuit City tend to sell products	15:26:18
2 MS. LIN:	Let me ask it this way.	15:23:59	2 that were in high demand as loss leaders?	15:26:22
3 BY MS. LIN:		15:23:59	3 A We created high demand by selling	15:26:27
4 Q When you are discussing final drop	15:24:00	4 products at a lower price, but if I understood you	15:26:34	
5 prices from a competitor, what does that mean?	15:24:03	5 correctly, to say these are high demand products	15:26:41	
6 A What it says is that we go to a	15:24:07	6 that we are trying to sell below costs, that would	15:26:44	
7 competitor and we go as a customer and see what	15:24:10	7 not be why we sold them below costs.	15:26:46	
8 the real prices they are offering that customer	15:24:16	8 MR. LAHAD: Is that question directed to	15:26:51	
9 and then we are pricing to that price.	15:24:19	9 products generally or just CRT finished	15:26:52	
10 Q The real price could be something other	15:24:22	10 products?	15:26:53	
11 than the advertised or sticker price?	15:24:24	11 BY MS. LIN:	15:26:53	
12 A The competitor's real price is something	15:24:29	12 Q To CRT finished products. Sorry.	15:26:54	
13 other than what they have got tagged.	15:24:32	13 A Right.	15:26:56	
14 Q Circuit City would act as a customer in	15:24:37	14 MR. LAHAD: Is that how you understood	15:26:58	
15 order to find out what that real lower price was	15:24:39	15 the question?	15:27:00	
16 offered by a competitor?	15:24:42	16 THE WITNESS: Yes.	15:27:01	
17 A Yes.	15:24:43	17 BY MS. LIN:	15:27:03	
18 Q Do you see anything wrong with that	15:24:52	18 Q When Circuit City sold CRT finished	15:27:05	
19 practice of acting as a customer at your	15:24:54	19 products below cost, did the person setting the	15:27:09	
20 competitor's store?	15:24:57	20 price know that they were setting it below cost?	15:27:12	
21 MR. LAHAD: Objection, scope. You are	15:24:59	21 A The buyer would know, yes.	15:27:15	
22 asking him personally if there is anything	15:25:00	22 Q Could an individual store set a CRT	15:27:20	
23 wrong with that, a 30(b)(6) witness? I don't	15:25:02	23 finished product sale below cost without realizing	15:27:22	
24 know.	15:25:04	24 it was doing so?	15:27:25	
25 MR. ROSS: Beyond the scope of the	15:25:07	25 MR. GRALEWSKI: Objection, form.	15:27:28	
Page 159		Page 161		
1 30(b)(6).	15:25:08	1 THE WITNESS: They had the information	15:27:30	
2 MR. GRALEWSKI: Objection, form.	15:25:10	2 to know what the costs was.	15:27:34	
3 THE WITNESS: I know of no other way to	15:25:12	3 BY MS. LIN:	15:27:36	
4 stay competitive.	15:25:14	4 Q Could prices ever appear to be below	15:27:41	
5 BY MS. LIN:	15:25:15	5 cost, but actually not truly be below cost, but	15:27:44	
6 Q Then to determine the prices that your	15:25:16	6 when factored in rebates or other vendor funding?	15:27:49	
7 competitors are selling their products at?	15:25:19	7 MR. LAHAD: Objection, lacks foundation,	15:27:54	
8 A Yes.	15:25:20	8 vague.	15:27:55	
9 Q Do you know if Circuit City ever used	15:25:22	9 THE WITNESS: I would answer that they	15:28:00	
10 CRT finished products as loss leaders during the	15:25:24	10 are still below costs. Do you have funds	15:28:02	
11 relevant time period?	15:25:28	11 that might make your overall profitability	15:28:05	
12 A By "loss leader" you would mean you sold	15:25:31	12 better, yes, but they are still below costs.	15:28:11	
13 it for below cost?	15:25:34	13 BY MS. LIN:	15:28:15	
14 Q However that term might have been used	15:25:37	14 Q Given how Circuit City defines cost?	15:28:16	
15 by Circuit City.	15:25:39	15 A Right.	15:28:19	
16 A No, that would be the definition that I	15:25:40	16 Q Are you aware of laws in certain states	15:28:20	
17 would use is we did our very best and never sold	15:25:43	17 that prohibit below cost sales?	15:28:21	
18 products below what we paid for it but yes there	15:25:49	18 MR. LAHAD: Objection, scope.	15:28:25	
19 were times we did do so.	15:25:53	19 MR. ROSS: Hold on a second. If you're	15:28:28	
20 Q Do you know how Circuit City selected	15:25:54	20 asking that as a 30(b)(6) witness, then no,	15:28:28	
21 the CRT finished products it would sell as loss	15:25:55	21 be is not going to answer. That is well	15:28:31	
22 leaders?	15:26:00	22 beyond the cope.	15:28:33	
23 A They could choose ones that they thought	15:26:01	23 BY MS. LIN:	15:28:34	
24 were effective in advertising or that they had an	15:26:06	24 Q Do you know if Circuit City would raise	15:28:35	
25 excess inventory on for whatever reason.	15:26:10	25 prices at any time to make up for below cost sales	15:28:37	

41 (Pages 158 - 161)

VERITEXT REPORTING COMPANY

212-267-6868

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516-608-2400

Page 162		Page 164	
1	that occurred during another time period? 15:28:41	1	of thing, but sometimes less. 15:31:29
2	MR. LAHAD: Vague as to when you say "at 15:28:46	2	It might give you an average selling 15:31:32
3	another time period." Are you talking about 15:28:47	3	price. It could depending on which company you 15:31:41
4	a time period other than the relevant time 15:28:49	4	are working with, it might give you the share of 15:31:50
5	period we are talking about? 15:28:52	5	market for a model or a brand, so Sony has 50 15:31:53
6	BY MS. LIN: 15:28:52	6	percent of the market, or this specific product 15:32:00
7	Q No. So if a low-cost sale occurred -- 15:28:52	7	has 6 percent of the market. 15:32:02
8	No. If a below-cost sale occurred at one time, 15:28:55	8	Q Do you know how Circuit City made use of 15:32:05
9	would Circuit City ever at a different point in 15:29:03	9	the information it was obtaining from these 15:32:07
10	time than when that low sale occurred raise prices 15:29:06	10	third-party companies about the CRT finished 15:32:09
11	to make up for the low cost incurred during the 15:29:09	11	product market? 15:32:12
12	low-cost sale? 15:29:12	12	A We used it for budgeting processes. We 15:32:13
13	MR. LAHAD: Vague. 15:29:14	13	used it for forecasting of our inventory 15:32:15
14	THE WITNESS: Right, that scenario 15:29:15	14	processes, and now we used it as sort of a report 15:32:19
15	doesn't sound viable because you still have 15:29:17	15	card on how we are doing versus others. We used 15:32:23
16	to have the product priced at a competitive 15:29:20	16	it as helping us to decide the size of our 15:32:26
17	price. So we are not going to price above 15:29:23	17	programs or our assortments. 15:32:31
18	the competitive level. 15:29:26	18	Q Who were Circuit City's competitors 15:32:35
19	We are not going to price above a 15:29:28	19	during the relevant time period? 15:32:38
20	manufacturer's suggested retail price with 15:29:30	20	A I used to joke. "It is everybody." But 15:32:41
21	the hopes that that we sell a couple that 15:29:32	21	the biggest competitors for consumer electronics 15:32:44
22	make the margin because you are not going to 15:29:34	22	during this period of time would have been Best 15:32:48
23	sell them. 15:29:36	23	Buy, Wal-Mart, Amazon, the sort of the three 15:32:50
24	BY MS. LIN: 15:29:40	24	biggies, and then you also had Target and we had 15:32:58
25	Q Do you recall Circuit City using any 15:29:41	25	regional competitors that varied by marketplace 15:33:06
Page 163		Page 165	
1	thirty-party companies to provide information to 15:29:47	1	and there are dozens of those. 15:33:09
2	it about the CRT finished product market? 15:29:49	2	Q Were there any competitors that Circuit 15:33:15
3	MR. LAHAD: Vague. 15:29:56	3	City considered particularly significant in the 15:33:17
4	THE WITNESS: Yes. 15:29:59	4	CRT finished product market? 15:33:20
5	BY MS. LIN: 15:30:00	5	A Because Best Buy was the other large 15:33:22
6	Q Which third-party companies? 15:30:02	6	consumer electronics store, they were clearly a 15:33:28
7	A We used NPD. We used CEA. We also used 15:30:04	7	focus, but both Wal-Mart and Amazon market share 15:33:29
8	other forecasters like Forrester for various 15:30:14	8	for consumer electronics grew over this period of 15:33:37
9	tentimes. I don't know whether CRT would have been 15:30:18	9	time that we are talking about, so like in 1995, 15:33:40
10	specific to that. 15:30:21	10	maybe Amazon was not a big deal, but by 2007, they 15:33:45
11	And that is the overall market is, the 15:30:25	11	were a huge issue. 15:33:49
12	type, are you talking about the selling market, 15:30:27	12	Q Were there any positions at Circuit City 15:33:53
13	then that is what I have answered for. 15:30:32	13	responsible for monitoring the CRT finished 15:33:57
14	Q What types of information did these 15:30:35	14	product costs to consumers charged by Circuit 15:33:59
15	companies provide to Circuit City about CRT 15:30:37	15	City's competitors? 15:34:03
16	finished product market? 15:30:40	16	A You just asked me if we had anybody that 15:34:06
17	A Typically, and CEA is what they call 15:30:43	17	monitored the cost that other people had? 15:34:09
18	"sell in data," NPD would sell ^{WWD} sell data and 15:30:48	18	Q I said cost to consumer, so the prices, 15:34:12
19	neither were all inclusive. 15:30:52	19	I am sorry, we are using those interchangeably? 15:34:15
20	You could only use them as indicators. 15:30:55	20	A Now we are on the other side. 15:34:17
21	They were not 100 percent accurate. 15:30:58	21	Q Yes, now we are on the other side. Were 15:34:19
22	It would provide the size of the market, 15:31:02	22	there any people at Circuit City that were 15:34:22
23	so CRT, 13-inch TVs, are 2 million sales, units a 15:31:05	23	responsible for monitoring the prices Circuit 15:34:23
24	year, it would give you the forecast of what it is 15:31:18	24	City's competitors charged to customers? 15:34:27
25	going to be for usually a rolling three years kind 15:31:24	25	A You could argue that everybody in 15:34:30

42 (Pages 162 - 165)

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

Page 166	Page 168
1 merchandise was responsible and everybody in sales 15:34:32	1 than us," we call that shopping report. 15:37:34
2 was responsible because you need to have that 15:34:35	2 BY MS. LIN: 15:37:36
3 information to be competitive and just know what 15:34:37	3 Q How frequently were shopping reports 15:37:36
4 is going on around you. 15:34:41	4 drafted? 15:37:38
5 Specifically, the people who do ads 15:34:43	5 A Typically, if you were doing them at 15:37:40
6 which is sometimes as an ad manager, and sometimes 15:34:52	6 all, they would be on a weekly basis, but there 15:37:43
7 it was the buyer, and sometimes it was as product 15:34:54	7 were periods where you did not do them, as I said, 15:37:48
8 specialist, and so on, would keep track of what 15:34:57	8 because we were not going to do anything with 15:37:50
9 prices our competitors advertised at and we would 15:34:59	9 them, so why waste people's time? 15:37:52
10 react to those ad prices. 15:35:05	10 Again not only would Christmas time be 15:37:54
11 Their everyday pricing that was out 15:35:10	11 so hectic that people do not go from store to 15:38:00
12 there in the field, Best Buy and Wal-Mart, and so 15:35:13	12 store as often, but you also don't have any people 15:38:02
13 on, they tended to do the same thing we did which 15:35:17	13 that are not busy, so you cannot send them out. 15:38:04
14 is to price nationally. 15:35:22	14 Q Were shopping reports created throughout 15:38:10
15 As a buyer you could go out and shop 15:35:25	15 the relevant period? 15:38:12
16 your own product and see what the other guy was 15:35:28	16 A Yes. 15:38:14
17 selling the product for individually. 15:35:31	17 Q Did Circuit City ever use customer 15:38:21
18 But we also had people as we have talked 15:35:34	18 surveys to monitor its competitors' prices? 15:38:23
19 about that would go out and visit our competitors 15:35:37	19 MR. LAHAD: During the relevant time 15:38:28
20 and look at what their pricing is and communicate 15:35:41	20 period for CRT finished products? 15:38:30
21 that back to the merchandising team to decide if 15:35:46	21 MS. LIN: Yes. 15:38:32
22 we are going to react to it. 15:35:52	22 THE WITNESS: I don't know of any cases 15:38:33
23 Q Was that a specific role or job title 15:35:54	23 where we used it to monitor retail prices. 15:38:34
24 that someone went out to shop competitors' prices? 15:35:57	24 no. 15:38:38
25 A No. We used everybody that was in the 15:36:01	25 MS. LIN: Do you want to take a short 15:38:44
Page 167	Page 169
1 stores would shop, so no, there wasn't a single 15:36:04	1 break or keep going? 15:38:44
2 title. 15:36:11	2 MR. ROSS: Let's take a break. 15:38:47
3 Q Did Circuit City gather information 15:36:16	3 MS. LIN: Let's take a short break. 15:38:48
4 about its competitor's discounts? 15:36:22	4 THE VIDEOGRAPHER: The time is 15:38:49
5 A As I said, if the competitor ran a sale, 15:36:27	5 approximately 3:38 p.m. and we are off the 15:38:49
6 we tracked that very closely because they are very 15:36:31	6 record. 15:38:51
7 visible and it is easy to see and it has an 15:36:35	7 (Whereupon, a break in the proceedings commenced 15:39:08
8 impact. 15:36:39	8 at 3:38 p.m. and on resuming at 3:50 p.m.) 15:39:08
9 If they discounted their product on the 15:36:42	9 THE VIDEOGRAPHER: The time is 15:50:21
10 floor, then it is less visible and hopefully one 15:36:46	10 approximately 3:50 p.m. and we are back on 15:50:21
11 of our standard reports catches that information, 15:36:48	11 the record. 15:50:25
12 again, we probably would not react to it if it is 15:36:54	12 (Whereupon, Deposition Exhibit 2843 is marked for 15:50:28
13 a short term type of a thing, but yes. 15:36:58	13 Identification.) 15:50:28
14 Q You referenced a standard report, what 15:37:02	14 MS. LIN: I am going to mark another 15:50:28
15 were those? 15:37:05	15 document for you, I am marking Exhibit 2843. 15:50:29
16 A I am sorry. I think I would have to 15:37:06	16 a document Bates labeled CC 0021806. 15:50:34
17 have it read back to me to make sure. 15:37:13	17 BY MS. LIN: 15:50:40
18 MR. ROSS: You're missing a word. 15:37:16	18 Q Are you familiar with the pricing 15:50:40
19 BY MS. LIN: 15:37:16	19 process described on the first page of Exhibit 15:51:24
20 Q Maybe instead, standard shopping report? 15:37:19	20 2843? 15:51:26
21 MR. ROSS: There you go. 15:37:21	21 A I am familiar with many such documents. 15:51:29
22 THE WITNESS: Right, so we had shopping. 15:37:21	22 Q Do you know when this pricing process 15:51:34
23 They would go out, and say, "These are the 15:37:24	23 was adopted by Circuit City? 15:51:38
24 prices that we found," and communicate that 15:37:28	24 MR. LAHAD: Objection, assumes facts. 15:51:40
25 back. "Here are the prices that are lower 15:37:31	25 MS. LIN: Strike that. 15:51:43

43 (Pages 166 - 169)

VERITEXT REPORTING COMPANY

212-267-6868

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516-608-2400

Page 170	Page 172
<p>1 BY MS. LIN: 15:51:43</p> <p>2 Q Was a pricing process of this kind in 15:51:43</p> <p>3 place at Circuit City? 15:51:47</p> <p>4 A Yes, and to answer your question about 15:51:50</p> <p>5 when, I do not know when this was produced. The 15:51:54</p> <p>6 reason why I said many such documents is because 15:52:03</p> <p>7 this would change. 15:52:05</p> <p>8 Q What was the pricing process here 15:52:08</p> <p>9 generally referring to? 15:52:11</p> <p>10 A This is referring to how the everyday 15:52:13</p> <p>11 pricing is set and who is going to provide 15:52:19</p> <p>12 information and input on any other changes that 15:52:23</p> <p>13 need to be done. 15:52:26</p> <p>14 Q Were there specific employees whose job 15:52:30</p> <p>15 title was market leader? 15:52:33</p> <p>16 A Yes, for this time period. 15:52:37</p> <p>17 Q Was that the job title, market reader? 15:52:42</p> <p>18 A I believe what they are referring to is 15:52:47</p> <p>19 the – No, I am sorry. I think what we are 15:52:50</p> <p>20 referring to is a person that has been designated 15:53:04</p> <p>21 in a market to be a market leader, this would be a 15:53:09</p> <p>22 store manager or a division merchandise manager 15:53:12</p> <p>23 generally. 15:53:16</p> <p>24 Q So market leader was not a full time 15:53:16</p> <p>25 position. It was an assignment? 15:53:19</p>	<p>1 where the newspaper has an influence, 15:54:37</p> <p>2 predominantly large cities, small cities may not 15:54:41</p> <p>3 have had a market leader and they certainly would 15:54:46</p> <p>4 have had a pricing coordinator. 15:54:51</p> <p>5 Q Turn to the next page. If you look at a 15:54:53</p> <p>6 market leader role description, the second row 15:55:00</p> <p>7 second column, do you know what the acronym TMI 15:55:05</p> <p>8 means? 15:55:09</p> <p>9 A "Total" something "income," but 15:55:17</p> <p>10 basically, it is profit dollars. By the way, it 15:55:22</p> <p>11 says, "market leaders are either a GM, a DM or 15:55:32</p> <p>12 store manager." 15:55:37</p> <p>13 Q I see, and GM or DM mean general manager 15:55:37</p> <p>14 and district manager respectively? 15:55:42</p> <p>15 A Correct. 15:55:45</p> <p>16 Q Are you familiar with the acronym PSB? 15:55:47</p> <p>17 A Yes. 15:55:55</p> <p>18 Q What does PSB mean? 15:55:56</p> <p>19 A Program strategy book. 15:55:57</p> <p>20 Q What was the program strategy book? 15:56:02</p> <p>21 A The program strategy book was the 15:56:05</p> <p>22 store's weekly. They got one on a weekly basis. 15:56:08</p> <p>23 It would say, "Here are all the products that you 15:56:17</p> <p>24 carry. Here are the prices that you are to price 15:56:22</p> <p>25 them at on the floor," and it would also include 15:56:24</p>
Page 171	Page 173
<p>1 A Yes. 15:53:20</p> <p>2 Q What about pricing coordinator, was that 15:53:21</p> <p>3 a particular position at Circuit City at any time? 15:53:25</p> <p>4 A Yes, there were pricing coordinators at 15:53:29</p> <p>5 various times. 15:53:34</p> <p>6 Q Was pricing coordinator a job title used 15:53:34</p> <p>7 by Circuit City? 15:53:38</p> <p>8 A Yes. 15:53:39</p> <p>9 Q Can you recall anyone that held a 15:53:42</p> <p>10 pricing coordinator position that related to CRT 15:53:44</p> <p>11 finished products? 15:53:47</p> <p>12 A This is a pricing coordinator in the 15:53:48</p> <p>13 field, so this is a specific person who would have 15:53:51</p> <p>14 worked in a store that would have been for 15:53:54</p> <p>15 reporting to the market leader, as it says, that 15:53:58</p> <p>16 would go out into those shops. I can't name a 15:54:00</p> <p>17 person who had that position. 15:54:05</p> <p>18 Q Would that be a full-time position doing 15:54:06</p> <p>19 the duties described in the pricing coordinator 15:54:08</p> <p>20 box per store? 15:54:12</p> <p>21 A No, not per store. Per market. 15:54:18</p> <p>22 Q Per market. What constituted a market 15:54:21</p> <p>23 by that definition? 15:54:24</p> <p>24 A A market would be an area that will be 15:54:26</p> <p>25 determined by the ad market, so it would have been 15:54:32</p>	<p>1 data like store cost and it will include sales 15:56:28</p> <p>2 data. 15:56:34</p> <p>3 Q Do you know the acronym CMB? 15:56:36</p> <p>4 A Where is that used here? CBM was our 15:56:41</p> <p>5 acronym for class brand model. 15:56:52</p> <p>6 Q So that is CBM. So what is class brand 15:56:56</p> <p>7 model? 15:56:58</p> <p>8 A Class would be like products all grouped 15:56:58</p> <p>9 together. So they are a television, 13-inch TVs 15:57:07</p> <p>10 might be a class, and then the brand and then the 15:57:14</p> <p>11 specific model number. 15:57:18</p> <p>12 Q Each CRT finished products could be 15:57:19</p> <p>13 defined with its CMB? 15:57:22</p> <p>14 A Yes, CBM, yes. 15:57:25</p> <p>15 Q CBM, thank you. On that page ending in 15:57:26</p> <p>16 Bates Number 07, the one that you were telling me. 15:57:32</p> <p>17 A Oh, there it is. 15:57:38</p> <p>18 Q Under market leader and then market 15:57:40</p> <p>19 Level CTC? 15:57:44</p> <p>20 A Yes. 15:57:46</p> <p>21 Q It says, "Competitively prices market to 15:57:49</p> <p>22 focus competitors." Is focus competitors a term 15:57:52</p> <p>23 you are familiar with? 15:57:55</p> <p>24 A Yes. 15:57:56</p> <p>25 Q What does that mean? 15:57:57</p>

44 (Pages 170 - 173)

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		Page 174			Page 176
1	A It means those that we have chosen to react to as we discussed earlier, the key competitors.	15:57:58	1	Q Going back to the box you were looking at previously, so market leader, market level	16:00:31
2		15:58:01	2	3 CTCs, what does it mean for Circuit City to competitively price the market?	16:00:33
3		15:58:07	5	A It means to react to the focus competitor by changing your price to be competitive with your focus competitors.	16:00:36
4	Q Circuit City selected key focus competitors to react to in terms of changing its product prices?	15:58:10	6	6 competitor by changing your price to be competitive with your focus competitors.	16:00:39
5		15:58:12	8	7 Q Did Circuit City think it could best set competitive prices by knowing the prices charged by its competitors in the market?	16:00:42
6		15:58:16	10	8 MR. LAHAD: Again talking about CRT finished products during the relevant time period?	16:00:46
7	A Yes.	15:58:17	11	9 THE WITNESS: Ask again. Sorry.	16:00:50
8	Q Are you familiar with the phrase strategy shops?	15:58:22	12	10 Q Did Circuit City think it could best set competitive prices by knowing the prices charged by its competitors in the market?	16:00:54
9		15:58:24	11	11 MS. LIN: Generally speaking.	16:00:57
10	A Yes.	15:58:24	12	12 THE WITNESS: Ask again. Sorry.	16:01:08
11	Q What does that mean?	15:58:25	13	13 BY MS. LIN:	16:01:14
12	A It basically means that you are trying to understand what the store does to make the sale.	15:58:28	14	14 Q Did Circuit City think it could best set competitive prices by knowing the prices charged by its competitors in the marketplace?	16:01:17
13		15:58:31	15	15 A I think that's the definition of competitive prices, so by definition, yes.	16:01:22
14		15:58:40	16	16 Q Could I have you go to the next page? I want to direct your attention to the box "District Manager" and "Store Execution."	16:01:23
15	Do they have a strategy that they are going to say, just like our strategies, that they are, "Going to sell the stereo TVs, and by the way, we have more stereo TVs than Circuit City does."	15:58:41	17	17 competitive prices by knowing the prices charged by its competitors in the marketplace?	16:01:26
16		15:58:43	18	18 A I think that's the definition of competitive prices, so by definition, yes.	16:01:28
17		15:58:51	19	19 Q Could I have you go to the next page? I want to direct your attention to the box "District Manager" and "Store Execution."	16:01:31
18		15:58:55	20	20 competitive prices by knowing the prices charged by its competitors in the marketplace?	16:01:34
19		15:58:58	21	21 A I think that's the definition of competitive prices, so by definition, yes.	16:01:39
20	Q A strategy shop is an effort to learn what strategies a competitor of Circuit City's is using to sell products?	15:58:59	22	22 Q Could I have you go to the next page? I want to direct your attention to the box "District Manager" and "Store Execution."	16:01:40
21		15:59:01	23	23 A Do you know what it means there by test,	16:01:47
22		15:59:03	24		16:01:54
23	A Yes.	15:59:05			
24	Q And Circuit City used strategy shops to learn that information?	15:59:06			
25		15:59:09			
		Page 175			Page 177
1	A Mostly, the buyer would do those sort of things because they tend to be not as obvious.	15:59:10	1	the store management's knowledge?	16:01:55
2		15:59:15	2	2 A He is basically saying that the district manager needs to say, "Does the store management know what the competitors are up to? Does he know that the guy who is next door is lower than him on 6 ten items?"	16:02:01
3	But, yes, we would try to understand.	15:59:20	3	3 Q Circuit City expected its store managers to know that type of information about its competitors' sales prices?	16:02:04
4	The strategy might just simply be Circuit City has commission salespeople and that is what Best Buy would tell every single person.	15:59:22	4	4 A He expected them to be able to create an environment that kept us competitive.	16:02:15
5		15:59:29	5	5 Q In creating that environment it included knowing the prices charged by competitors.	16:02:18
6		15:59:31	6	6 A The manager himself may not know those, but because he has got people that he sent out to do shopping reports, and because he looks at ads and other activity that is public, he should have some idea of what is going on in the business.	16:02:25
7	"Our people are non-commission. They are lying to you," so you need to know that no you would be able to overcome an objection that your customer might have.	15:59:35	7	7 Q Looking at the next row down that is listed on this chart to review competitor ads for strategic and pricing information?	16:02:27
8		15:59:35	8	8 A It would appear to be, yes, but almost everybody in the company looked at competitor ads	16:02:30
9		15:59:39	9		16:02:32
10		15:59:42	10	10 Q Is it correct that it is a weekly or a daily responsibility of the employees to	16:02:35
11	Q Do you know what tactical shops were?	15:59:44	11	11 A Looking at the next row down that is listed on this chart to review competitor ads for strategic and pricing information?	16:02:38
12	A The tacticals are the specific prices, I believe.	15:59:47	12	12 Q Is it correct that it is a weekly or a daily responsibility of the employees to	16:02:42
13		15:59:53	13	13 A It would appear to be, yes, but almost everybody in the company looked at competitor ads	16:02:46
14	Q Circuit City shopped its competitors to find out its price information through tactical shops?	15:59:54	14		16:02:49
15		15:59:59	15		16:02:52
16		16:00:01	16		16:02:56
17	A Where are you reading it and I will see if I can --	16:00:04	17		16:03:00
18		16:00:06	18		16:03:07
19	Q So under market leader shopping process?	16:00:06	19		16:03:10
20	A Yes, basically saying, "Go out and find out what the prices are." That is your tactical shop.	16:00:16	20		16:03:13
21		16:00:20	21		16:03:18
22		16:00:24	22		16:03:21
23	"Go out and find out what they are saying to make people buy from them and instead buy from you."	16:00:24	23		16:03:26
24		16:00:25	24		16:03:27
25		16:00:28	25		16:03:31

45 (Pages 174 - 177)

VERITEXT REPORTING COMPANY

212-267-6868

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516-608-2400

Page 178	Page 180
1 just again so he would know what was going on. 16:03:34	1 our own promotional calendar than there would be 16:06:49
2 Q Can I have you turn two pages forward to 16:03:54	2 your competitor's calendar. 16:06:51
3 the page ending in 21810 under pricing 16:03:57	3 Q Was Circuit City's promotional calendar 16:06:53
4 coordinator's monthly responsibilities, do you see 16:04:06	4 driven in part by competitor's prices? 16:06:56
5 where it says "communicate monthly shopping 16:04:09	5 A It was driven by competitor's ad prices. 16:06:59
6 calendar"? 16:04:11	6 Q Can I have you turn to the following 16:07:04
7 A Yes. 16:04:12	7 page. Do you know who Tim Kopp is, the name at 16:07:05
8 Q What does that mean? 16:04:13	8 the top of this page? 16:07:12
9 A The pricing coordinator is saying who we 16:04:15	9 A I remember the name. I do not know him. 16:07:14
10 are going to shop and when we are to shop them. 16:04:21	10 Q Do you know what role Mr. Kopp had at 16:07:17
11 Q So the pricing coordinator would send 16:04:25	11 Circuit City? 16:07:20
12 out assignments to shop other stores? 16:04:27	12 A No. 16:07:21
13 A One price coordinator typically could 16:04:30	13 Q Are you familiar with the corporate 16:07:22
14 not do all the shopping, so he is going to say, 16:04:33	14 operations department? 16:07:24
15 "This store needs to help me by shopping this, and 16:04:38	15 A Yes. 16:07:25
16 this store needs to help me by shopping that," and 16:04:42	16 Q What is that? 16:07:25
17 so on, so he can get or she can get all of their 16:04:44	17 A That would be the store management group 16:07:26
18 information together. 16:04:48	18 and everybody in the store. For us "operations" 16:07:30
19 Q Going to the daily column row for sale 16:04:55	19 was everybody that ran the stores that worked in 16:07:36
20 counselors. So the bottom white box on the same 16:05:02	20 the stores. 16:07:39
21 page, where it says, "Put up take down price tags 16:05:06	21 Q So that corporate operations meant 16:07:40
22 as directed by sales managers." 16:05:10	22 anybody that worked in any Circuit City store? 16:07:42
23 Was putting up or taking down price tags 16:05:12	23 A Corporate operations would be the 16:07:44
24 as directed by sales managers a daily function of 16:05:14	24 supervisors for the people who worked in the 16:07:47
25 sales counselors at Circuit City? 16:05:18	25 stores. 16:07:49
Page 179	Page 181
1 A No. It is listed under daily, but it 16:05:20	1 Q Was corporate operations located in 16:07:50
2 wasn't a daily activity. You had pricing that 16:05:26	2 Richmond? 16:07:53
3 happened on a week long basis because your PSB 16:05:30	3 A Yes. 16:07:54
4 came out and it talked about the promo report, so 16:05:37	4 Q This document refers to A and B prices. 16:07:56
5 you had a promo report that had to be lagged. 16:05:40	5 Are you familiar with those terms? 16:07:59
6 If you had a competitive price reaction, 16:05:43	6 MR. LAHAD: For the record, this 16:08:02
7 it could happen off of that cycle, but we 16:05:45	7 document appears to be a draft. It has got 16:08:03
8 specifically tried to tie those cycles so that 16:05:53	8 strike-throughs and underlines. It looks 16:08:07
9 they didn't have to do it every single day. 16:05:55	9 like a red line and it has got the black 16:08:10
10 You would typically say the ad, start on 16:05:59	10 lines on the side. 16:08:11
11 Sunday, they end on Saturday, so Sunday is the day 16:06:02	11 To the extent that you want to ask him 16:08:12
12 where you put everything up. However, your 16:06:05	12 about a document that is clearly a draft, I 16:08:14
13 competitors run their ads on Sunday also, so you 16:06:09	13 will object in that it lacks foundation as 16:08:18
14 have got to have a reaction to that and those may 16:06:13	14 to what this document really is. 16:08:22
15 be up Monday or they may be up Tuesday. 16:06:17	15 BY MS. LIN: 16:08:24
16 You had two or three days that had high 16:06:20	16 Q Do you see at the top of the document, 16:08:24
17 activity. You may also have another ad during the 16:06:24	17 it says, "supersedes"? 16:08:26
18 week like a Thursday or Friday. 16:06:28	18 A Yes. 16:08:29
19 Q And high activity in that context would 16:06:31	19 Q Do you see the date there is July 31, 16:08:31
20 mean changing prices to react to a competitor's 16:06:34	20 1996? 16:08:34
21 prices? 16:06:37	21 A Yes. 16:08:34
22 A Mostly it's because you're having an ad 16:06:38	22 Q Do you understand that that would mean 16:08:37
23 and you have got all of these changes that you 16:06:41	23 that the version, that parts of this document that 16:08:39
24 have got to do to do your own ad. 16:06:44	24 are not red lined are underlined were in the 16:08:42
25 There would be far more changes based on 16:06:46	25 original policy? 16:08:46

46 (Pages 178 - 181)

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212-267-6868

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516-608-2400

	Page 182	Page 184
1	MR. LAHAD: Calls for speculation, lacks	16:08:47
2	foundation.	16:08:49
3	THE WITNESS: That would be what it	16:08:50
4	appears, yes.	16:08:54
5	BY MS. LIN:	16:08:55
6	Q You are familiar with store pricing	16:08:55
7	policies other than this document?	16:08:57
8	A Yes.	16:09:02
9	Q Did those store pricing policies include	16:09:03
10	information about shopping competitors' retail	16:09:06
11	prices just like we have been discussing?	16:09:07
12	A Yes.	16:09:12
13	Q Are you familiar with the terms A and B	16:09:13
14	pricing at Circuit City?	16:09:14
15	A Yes.	16:09:16
16	Q What does that mean?	16:09:16
17	A The A price was the price that you were	16:09:18
18	tagged at the majority of the time.	16:09:23
19	The B price was most often your ad price	16:09:28
20	which quite often aligned with the manufacturer's	16:09:36
21	minimum advertised price.	16:09:40
22	But the price that would show up in the	16:09:44
23	stores -- the B price was created for the ease of	16:09:48
24	changing our own pricing so that you could say, "I	16:09:55
25	want to put all CRT TV on sale," then it would all	16:10:01
	Page 183	Page 185
1	go to B price. It was used as a process for our	16:10:06
2	promotional purposes.	16:10:12
3	Q Did A price tend to be higher or B	16:10:15
4	price?	16:10:18
5	A A price is the everyday higher price.	16:10:18
6	Q Do you know what PSB price in this	16:10:28
7	document means?	16:10:31
8	A It is the A price would have been --	16:10:32
9	well, at one point, the PSB would show you both an	16:10:36
10	A and B price, but the PSB is what we discussed	16:10:40
11	earlier.	16:10:45
12	So the PSB price could have been either	16:10:46
13	the A price or the B price. I believe he is	16:10:48
14	saying here the A PSB price.	16:10:52
15	Q Sorry, remind me, what is the acronym	16:10:55
16	for PSB?	16:10:58
17	A Program Strategy Book.	16:10:58
18	Q That's right. Can I have you turn to	16:11:00
19	the page ending in Bates No. 21813, so two pages	16:11:03
20	forward and under the heading advertised prices,	16:11:13
21	can you read the sentence beginning, "Our	16:11:15
22	Strategy?"	16:11:20
23	A "Our strategy is not to initiate	16:11:39
24	advertised prices lower than the prevailing market	16:11:41
25	advertised price."	16:11:44

47 (Pages 182 - 185)

VERITEXT REPORTING COMPANY

212-267-6868

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516-608-2400

		Page 186	Page 188
1	Q Were there times other than Black Friday sales where Circuit City would advertise CRT finished products lower than other advertised prices for CRT finished products by competitors?	16:14:46	1 increased the price, but it just means that you
2		16:14:48	2 have put it in the system where it will come up.
3		16:14:51	3 MR. LAHAD: My page 2 on this is exhibit
4		16:14:54	4 is blank.
5	A You would do it for the same reasons we talked about pricing in general which is, if you had an excess inventory of a product, and you needed to get rid of it, then you're going to advertise it at what you think it needs to be done to sell it.	16:14:57	5 THE WITNESS: Mine is too.
6		16:15:00	6 MS. LIN: I think that is just how it
7		16:15:02	7 was produced.
8		16:15:05	8 BY MS. LIN:
9		16:15:08	9 Q Downloading a price effectively means to
10		16:15:10	10 put the electronic system used by stores to learn
11	If you weren't competitive on one product because you did not carry it or whatever	16:15:15	11 their prices?
12		16:15:17	12 A Right, it specifically refers to the way
13	you might get more competitive on another product,	16:15:19	13 our computer processed input overnight and then
14	but in all cases, it could drive additional sell through.	16:15:23	14 downloaded that to the stores.
15		16:15:28	15 Q You were discussing a pricing team
16	(Whereupon, Deposition Exhibit 2844 is marked for Identification.)	16:15:31	16 previously. How big was the pricing team, do you
17		16:15:31	17 know?
18	MS. LIN: You can put that document aside, I will mark a document, Exhibit 2844.	16:15:31	18 A I think at its largest it might have
19		16:15:31	19 been as many as five, six people. I don't know
20	Bates No. CC 0606306.	16:15:48	20 precisely.
21	BY MS. LIN:	16:15:53	21 Q Was that team located in one location?
22	Q Mr. Deason, are you familiar with any of the people on the email Exhibit 2844?	16:15:54	22 A Richmond, Virginia.
23		16:16:28	23 Q Do you know when the pricing team was created?
24	A Yes,	16:16:31	24 A I believe it was around 2004. Similar
25	Q Who is Mr. Fiori?	16:16:33	25
		Page 187	Page 189
1	A He is working in what at this time is what's called a pricing team, I believe. He could have also been doing this based on November 25, 2007, yes, probably pricing team, sorry.	16:16:35	1 to when we started the BMA.
2		16:16:41	2 Q At the end of the CC line on Exhibit 2844, there are two emails ending in "Deloitte.com." Are you familiar with either of those people?
3		16:16:45	3 A No.
4		16:16:49	4 Q Do you know why employees from Deloitte might be cc'd on an email about Circuit City's pricing?
5	Q What was the pricing team?	16:16:53	5 A Yes.
6	A We had a pricing team that helped make sure that all the downloads were correct and that we were dealing with the end of life product and end pricing down into end of life product.	16:16:56	6 Q Why's that?
7		16:17:01	7 A They were a consultant.
8		16:17:05	8 Q What were they consulting Circuit City on?
9		16:17:08	9 A Practically everything. I don't know whether Deloitte specifically was that broad, but this was a time period when Circuit City was suffering and they had brought in quite a bit of consultants to evaluate practically everything that we did at the corporate level.
10	Buyers could deal with product that was continually product still being sold, still being in all stores, but invariably you would end up with leftovers and those did not get high visibility, so the pricing team would say, "You have got 400 of those and you have funded them for four months, what are you doing with it?"	16:17:12	10 Q The subject of this e-mail is, "Best Buy Reactions Week of 11/25," do you see that?
11		16:17:16	11 A Yes.
12		16:17:20	12 Q What do you understand that to mean?
13		16:17:23	13 A What I would understand it to mean is
14		16:17:27	
15		16:17:28	
16		16:17:32	
17	Q What does it mean to download a product?	16:17:34	
18	A Downloaded means that you are downloading a price for the stores so that they would then tag to that price so that when they went to sell it it would automatically come up at that price.	16:17:36	
19		16:17:38	
20		16:17:43	
21		16:17:46	
22		16:17:51	
23	Q Does downloading a price mean to decrease a price?	16:17:54	
24		16:17:54	
25	A Well, no, it could mean that you	16:17:54	

48 (Pages 186 - 189)

VERITEXT REPORTING COMPANY

	Page 190		Page 192
1 that, "This is what we are doing this week in 2 reaction to the Best Buy's ad of this week of 3 11/25, which by the way, is probably including 4 Thanksgiving and Black Friday."	16:20:19 16:20:21 16:20:25 16:20:29	1 Q During the relevant time period, did 2 Circuit City consider the market for CRT finished 3 products that it was buying and selling to be 4 competitive?	16:22:52 16:22:59 16:23:02 16:23:05
5 Q Do you know if Circuit City had weekly 6 reactions to Best Buy's ads?	16:20:30 16:20:33	5 MR. LAHAD: Objection, vague.	16:23:09
7 A We did at times.	16:20:35	6 THE WITNESS: I don't even know what you 7 are asking, sorry.	16:23:10 16:23:11
8 Q Do you know at what time Circuit City 9 had weekly reactions to Best Buy's ads?	16:20:39 16:20:41	8 BY MS. LIN:	16:23:12
10 A As you can see here, he is talking about 11 that he is not going to download it for everybody, 12 he is only going to download it for 100 stores.	16:20:44 16:20:47 16:20:50	9 Q Did Circuit City consider the market for 10 CRT finished product sales to consumers to be a 11 competitive one?	16:23:13 16:23:15 16:23:19
13 At other times we did not download 14 anything from corporate level. Everything was 15 done at the store level and then as we discussed 16 earlier there were times when we did not react.	16:20:53 16:20:55 16:20:58	12 MR. LAHAD: Same objection.	16:23:19
17 Q And the Best Buy reactions described in 18 Exhibit 2844 are all price reductions by Circuit 19 City, is that right?	16:21:10 16:21:13	13 THE WITNESS: Yes.	16:23:20
20 A That would be logical.	16:21:15	14 BY MS. LIN:	16:23:22
21 Q Because Circuit City was typically 22 reducing its prices when it was responding to the 23 Best Buy?	16:21:24 16:21:27 16:21:30	15 Q Why was that?	16:23:22
24 A Well, it's logical because you typically 25 don't have to go up to stay competitive. You	16:21:31 16:21:33	16 A Because all consumer electronics is 17 competitive.	16:23:24 16:23:28
	16:21:36 16:21:54 16:21:57 16:22:00	18 Q If I use the term plasma, will you 19 understand that to mean a type of monitor or TV 20 technology?	16:23:37 16:23:38 16:23:40
	16:22:02 16:22:03 16:22:05 16:22:07	21 A Yes.	16:23:41
	16:22:08 16:22:11	22 Q Did Circuit City consider plasma 23 products to be competitors to CRT finished 24 products?	16:23:41 16:23:44 16:23:46
	16:22:13 16:22:16	25 MR. LAHAD: Objection, vague.	16:23:48
	16:22:17 16:22:21		Page 193
	16:22:23 16:22:28	1 THE WITNESS: I don't see it as a 2 competitor. It's another offering. It is an 3 alternative, I guess, we sold,	16:23:51 16:23:53 16:23:58
	16:22:30 16:22:34	4 BY MS. LIN:	16:24:03
	16:22:37	5 Q Did plasma products and CRT finished 6 products compete for the same floor space in 7 Circuit City Stores?	16:24:04 16:24:06 16:24:11
	16:22:40 16:22:42	8 A They could.	16:24:12
	16:22:45 16:22:47	9 Q Did they ever compete for the same 10 customers?	16:24:12 16:24:15
	16:22:50 16:22:51	11 A Only to the degree that there is some 12 sort of convergence of similar pricing, but my 13 experience as a customer, and sitting on many many 14 video meetings, is that the pricing of plasma 15 product was very far apart from the retail pricing 16 of plasma product very far apart from pricing of 17 CRT product.	16:24:18 16:24:21 16:24:26 16:24:31 16:24:34 16:24:40 16:24:45
		18 Q Of course, you have the exception again 19 as we talked earlier if you have a very large CRT 20 product, the pricing may be close.	16:24:46 16:24:49 16:24:53
		21 A Do you know if Circuit City ever used 22 the cost it was paying for plasma products as part 23 of its negotiations in negotiating to purchase CRT 24 finished products?	16:24:56 16:25:00 16:25:04 16:25:09
		25 MR. LAHAD: Vague.	16:25:12

49 (Pages 190 - 193)

VERITEXT REPORTING COMPANY

212-267-6868

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516-608-2400

Page 194		Page 196	
1	THE WITNESS: First of all, they are not 16:25:14	1	BY MS. LIN: 16:27:32
2	going to share the costs, so they cannot do 16:25:15	2	Q Did Circuit City's sales prices to 16:27:32
3	it from -- but they might have done it from a 16:25:18	3	consumers on plasma products impact the prices 16:27:35
4	viewpoint of, "I am going to be selling 16:25:24	4	that Circuit City charged to consumers for CRT 16:27:39
5	plasma product at lower than what you are 16:25:29	5	finished products? 16:27:42
6	quoting us this CRT product for," and it 16:25:31	6	MR. LAHAD: Vague. 16:27:47
7	looks better. 16:25:36	7	THE WITNESS: What we sold one product 16:27:48
8	So in that context, yes. 16:25:38	8	for influence, what we sold the other product 16:27:50
9	BY MS. LIN: 16:25:39	9	for, the plasma versus CRT to the degree that 16:27:52
10	Q That would be a way to try to seek a 16:25:39	10	the customer would buy the product. 16:28:04
11	reduced cost to Circuit City of the CRT finished 16:25:42	11	BY MS. LIN: 16:28:06
12	product? 16:25:45	12	Q What do you mean by that? 16:28:09
13	MR. LAHAD: Misstates the testimony. 16:25:46	13	A If we had a CRT product and we planned 16:28:10
14	THE WITNESS: Right, and it also might 16:25:47	14	to sell it for \$400, and we had another LCD 16:28:15
15	explain why you are not buying it. 16:25:49	15	product that we planned to sell for \$500, and the 16:28:19
16	BY MS. LIN: 16:25:51	16	CRT product wasn't selling, then we might say that 16:28:22
17	Q If I use the term LCD, will you 16:25:51	17	it needs to be further away from the other 16:28:27
18	understand that to mean liquid crystal display? 16:25:54	18	product. 16:28:29
19	A Yes. 16:25:56	19	Q And CRT finished products in that 16:28:33
20	Q Did Circuit City consider LCD products 16:25:57	20	context would need to be lower than plasma or LCD 16:28:36
21	to be competitors to CRT finished products? 16:25:59	21	products, is that right? 16:28:39
22	MR. LAHAD: Vague. 16:26:03	22	A If they were comparably featured 16:28:40
23	THE WITNESS: I would give you the exact 16:26:04	23	typically LCD product was lighter and was trending 16:28:43
24	same answer as I did for the plasma. 16:26:05	24	to become popular. 16:28:49
25	There were customers who only wanted a 16:26:10	25	MS. LIN: Let's take a quick break to 16:28:53
Page 195		Page 197	
1	certain price point and where the price 16:26:14	1	change the tape. 16:28:52
2	points intersect they would be competitors 16:26:17	2	THE VIDEOGRAPHER: The time is 16:28:54
3	and where they did not intersect they would 16:26:20	3	approximately 4:28 p.m. This is end of tape 16:28:55
4	become less an impact to each other. 16:26:22	4	number 3. We are off the record. 16:28:59
5	BY MS. LIN: 16:26:24	5	(Whereupon, a break in the proceedings commenced 16:29:14
6	Q In negotiations with CRT finished 16:26:28	6	at 4:28 p.m. and on resuming at 4:30 p.m.) 16:29:14
7	product vendors similar to what we were discussing 16:26:33	7	THE VIDEOGRAPHER: This is the beginning 16:31:13
8	In the plasma context, did Circuit City ever use 16:26:36	8	of tape number 4. The time is approximately 16:31:14
9	the prices of LCD finished products as a 16:26:39	9	4:30 p.m. We are back on the record. 16:31:17
10	negotiating point to purchase the CRT finished 16:26:42	10	BY MS. LIN: 16:31:18
11	products? 16:26:45	11	Q Do you know how Circuit City learned its 16:31:19
12	MR. LAHAD: Vague. 16:26:46	12	alleged claims in this lawsuit? 16:31:22
13	THE WITNESS: I would answer the same 16:26:47	13	A No. 16:31:23
14	way. We would not be talking about the 16:26:48	14	Q Did you know why Circuit City came to 16:31:26
15	prices that we were buying LCD product from 16:26:53	15	believe that defendants engaged in the alleged 16:31:28
16	in specific numbers. 16:26:57	16	conspiracy without revealing any communications 16:31:30
17	We would be talking about we probably 16:26:59	17	with your counsel? 16:31:35
18	just counseled it around retail, but we can 16:27:03	18	A I have seen interrogatories on the LCD 16:31:37
19	sell this product, we are going to be able 16:27:06	19	case that would -- 16:31:44
20	to sell an LCD product for this price, so 16:27:11	20	MR. ROSS: Let me stop you there. That 16:31:48
21	therefore, we are not interested in selling 16:27:14	21	is different. 16:31:49
22	a CRT at some price. 16:27:18	22	THE WITNESS: I have not seen anything 16:31:49
23	That negotiation might be that I don't 16:27:22	23	on this. 16:31:51
24	want to buy it and does that mean that the 16:27:24	24	BY MS. LIN: 16:31:54
25	CRT vendor does something, then yes. 16:27:27	25	Q During the relevant time period, did 16:31:54

50 (Pages 194 - 197)

VERITEXT REPORTING COMPANY

212-267-6868

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516-608-2400

Page 198		Page 200	
1 anyone at Circuit City suspect that prices of CRT	16:31:56	1 reading of Exhibit 2845?	16:34:35
2 finished products were being kept high because of	16:31:59	2 MR. LAHAD: Is that 30(b)(6) question or	16:34:38
3 any price fixing?	16:32:03	3 is that for him?	16:34:40
4 A No.	16:32:05	4 MS. LIN: That is a 30(b)(6) question.	16:34:41
5 (Whereupon, Deposition Exhibit 2845 is marked for	16:32:05	5 MR. LAHAD: Lacks foundation.	16:34:44
6 Identification.)	16:32:05	6 MR. GRALEWSKI: Objection, form.	16:34:47
7 MS. LIN: I am going to mark an exhibit	16:32:13	7 THE WITNESS: It wasn't uncommon for	16:34:57
8 as Exhibit 2845. This is Bates No. CC	16:32:15	8 vendors to tell us that their costs were	16:34:59
9 0548555.	16:32:21	9 going up. The rest of it, I just purely	16:35:01
10 BY MS. LIN:	16:32:38	10 speculate, and speaking for Circuit City, I	16:35:08
11 Q Is Exhibit 2845 a white paper along the	16:32:39	11 don't want to do that.	16:35:11
12 type that we were reviewing previously?	16:32:45	12 BY MS. LIN:	16:35:13
13 A This one doesn't look like it is a	16:32:53	13 Q Reading the fourth bullet of Exhibit	16:35:13
14 preparation for a meeting, but rather a recap of a	16:32:55	14 2845, does it appear to you that CRT finished	16:35:16
15 previous meeting.	16:32:58	15 product prices were decreasing at the same time	16:35:19
16 Q Would that meeting be with Sony?	16:33:02	16 that tube prices were allegedly increasing?	16:35:22
17 A Yes.	16:33:04	17 MR. LAHAD: Lacks foundation, calls for	16:35:26
18 Q Are you familiar with the name of Jim	16:33:04	18 speculation.	16:35:28
19 Palumbo?	16:33:06	19 THE WITNESS: It says that the industry	16:35:29
20 A No.	16:33:07	20 average retail is down, so with that, that	16:35:30
21 Q I will represent to you that Jim Palumbo	16:33:09	21 could be because you are selling more of a	16:35:34
22 was employed by a Sony entity.	16:33:11	22 lower-priced point product than a	16:35:39
23 A Okay.	16:33:18	23 higher-priced point product, they would not	16:35:42
24 Q Can I have you read to yourself the	16:33:19	24 have to necessarily be going down.	16:35:45
25 fourth bullet on the first page.	16:33:22	25 BY MS. LIN:	16:35:46
Page 199		Page 201	
1 Does the information in that fourth	16:33:49	1 Q Do you see where it says, "Palumbo	16:35:49
2 bullet, Thomson, Phillips and Zenith raised their	16:33:51	2 believes that a 5 to 10 percent tube price	16:35:51
3 two prices in February 1996 suggest to you that	16:33:55	3 increase with stick in early 1997"?	16:35:54
4 these manufacturers were coordinating their CRT	16:33:58	4 A Yes.	16:35:56
5 tube prices?	16:34:02	5 Q This memo is reporting that Palumbo	16:35:58
6 MR. LAHAD: Lacks foundation, calls for	16:34:03	6 replayed this information as part of Circuit	16:35:59
7 speculation.	16:34:04	7 City's meeting with Sony, correct?	16:36:03
8 THE WITNESS: I don't know.	16:34:06	8 MR. LAHAD: Calls for speculation, lacks	16:36:05
9 BY MS. LIN:	16:34:07	9 foundation, and speaks for itself.	16:36:06
10 Q Is it possible that these three vendors	16:34:08	10 THE WITNESS: I don't know, but it	16:36:11
11 could have moved their two prices at the same time	16:34:09	11 implies such.	16:36:12
12 as they were not coordinating their prices?	16:34:12	12 BY MS. LIN:	16:36:16
13 MR. LAHAD: Calls for speculation, lacks	16:34:14	13 Q Does the comment about a 5 to 10 percent	16:36:17
14 foundation.	16:34:17	14 tube price increase sticking suggest to you that	16:36:20
15 THE WITNESS: I don't know.	16:34:18	15 there might have been an agreement among tube	16:36:23
16 BY MS. LIN:	16:34:19	16 manufacturers to increase tube prices?	16:36:25
17 Q Do you know if Circuit City investigated	16:34:19	17 MR. LAHAD: Lacks foundation, calls for	16:36:29
18 why the three manufacturers all raised their tube	16:34:22	18 speculation, speaks for itself.	16:36:29
19 price at the same time?	16:34:25	19 THE WITNESS: I can only give you a	16:36:33
20 A I do not know.	16:34:26	20 personal interpretation that it implies that	16:36:35
21 MR. LAHAD: Assumes facts, lacks	16:34:27	21 they all went up and that therefore it is	16:36:41
22 foundation.	16:34:31	22 going to stay.	16:36:44
23 BY MS. LIN:	16:34:31	23 BY MS. LIN:	16:36:46
24 Q Do you think Circuit City should have	16:34:31	24 Q Do you know if Circuit City investigated	16:36:48
25 investigated that information based on your	16:34:33	25 why Sony thought tube prices were expected to	16:36:51

51 (Pages 198 - 201)

VERITEXT REPORTING COMPANY

212-267-6868

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516-608-2400

	Page 202	Page 204
1 stick?	16:36:54	1 information? 16:39:59
2 A No.	16:36:55	2 A We had policies that changed over 16:40:01
3 MS. LIN: Let's go briefly go off the record.	16:37:01	3 periods of time, but yes. 16:40:04
4 THE VIDEOGRAPHER: The time is 4:37 p.m. and we are off the record.	16:37:03 16:37:04	4 Q How did the policies change over time? 16:40:06
5 THE VIDEOGRAPHER: The time is approximately 4:38 p.m. and we are back on the record.	16:38:10 16:38:11 16:38:13	5 A Well, exactly who would do it, how they would do it, how often they would do it, and then what they would do in reaction to that. 16:40:08
6 (Whereupon, a break in the proceedings commenced at 4:37 p.m. and on resuming at 4:38 p.m.)	16:38:10	6 Q Did the types of competitive information that you would collect change over time? 16:40:10
7 THE VIDEOGRAPHER: The time is approximately 4:38 p.m. and we are back on the record.	16:38:10 16:38:11 16:38:13	7 A Not really, I mean primarily you are wanting to know what did they tag it at, what did they sell at and what did they advertise it at? 16:40:14
8 MR. BAVE: Good afternoon, Mr. Deason, my name is William Bave and I represent the Toshiba entities. Thanks for you time this afternoon.	16:38:16 16:38:17 16:38:18 16:38:22	8 Q Were those policies you mentioned in writing? 16:40:16
9 THE WITNESS: You are welcome.	16:38:22	9 A Some were as introduced earlier. 16:40:19
10 EXAMINATION BY MR. BAVE:	16:38:22	10 Q Do those policies prohibit the Circuit City's employees from speaking directly with competitors' staffs? 16:40:21
11 Q You mentioned earlier in your testimony that Circuit City purchased CRT finished products from Toshiba, is that correct?	16:38:23 16:38:24 16:38:28	11 A Not really, I mean primarily you are wanting to know what did they tag it at, what did they sell at and what did they advertise it at? 16:40:25
12 A I believe that we did do so.	16:38:32	12 Q Were those policies you mentioned in writing? 16:40:29
13 Q When you purchased a Toshiba brand CRT product, did Circuit City know where that product had been manufactured?	16:38:34 16:38:38 16:38:42	13 A Were those policies you mentioned in writing? 16:40:32
14 A They would not know where all product	16:38:43	14 Q Did the types of competitive information that you would collect change over time? 16:40:34
		15 A Some were as introduced earlier. 16:40:39
		16 Q Do those policies prohibit the Circuit City's employees from speaking directly with competitors' staffs? 16:40:41
		17 A Not really, I mean primarily you are wanting to know what did they tag it at, what did they sell at and what did they advertise it at? 16:40:44
		18 Q Were those policies you mentioned in writing? 16:40:46
		19 A Not really, I mean primarily you are wanting to know what did they tag it at, what did they sell at and what did they advertise it at? 16:40:49
		20 Q Were those policies you mentioned in writing? 16:40:56
		21 A Not really, I mean primarily you are wanting to know what did they tag it at, what did they sell at and what did they advertise it at? 16:40:59
		22 Q Were those policies you mentioned in writing? 16:41:00
		23 A Not really, I mean primarily you are wanting to know what did they tag it at, what did they sell at and what did they advertise it at? 16:41:04
		24 Q Were those policies you mentioned in writing? 16:41:04
		25 A Not really, I mean primarily you are wanting to know what did they tag it at, what did they sell at and what did they advertise it at? 16:41:04
	Page 203	Page 205
1 was manufactured. They may have visited a factory and seen where some product was manufactured.	16:38:45 16:38:49	1 A dealt with that type of information and then at the store level you would have training, "Look, they are the enemy. We don't share data and we do not expect them to share data and that is not the way we do business." 16:41:06
2 Q Did Circuit City know who had manufactured the CRT within the Toshiba branded finished product?	16:38:52 16:38:53 16:38:57	2 Q Did Circuit City use the results of its competitor monitoring in its price negotiations with the CRT product vendors? 16:41:13
3 A Not in general, no.	16:38:58	3 A They are the enemy. We don't share data and we do not expect them to share data and that is not the way we do business." 16:41:16
4 Q Before we talked about who Circuit City viewed as their competitors and the retail space and you mentioned I think just generally regional companies, correct?	16:39:01 16:39:04 16:39:08 16:39:11	4 A Not in general, no. 16:41:21
5 A Correct.	16:39:12	5 Q Did Circuit City use the results of its competitor monitoring in its price negotiations with the CRT product vendors? 16:41:25
6 Q Can you list some of the ones that come to mind as regional competitors?	16:39:13 16:39:15	6 A They are the enemy. We don't share data and we do not expect them to share data and that is not the way we do business." 16:41:27
7 A Future Shop, ^{Lo Ays} American TV, HH Craig, Electronics Express, Sound Advice, Ultimate Electronics, and that is probably as good as I am going to get.	16:39:18 16:39:25 16:39:33 16:39:39	7 Q Did Circuit City use the results of its competitor monitoring in its price negotiations with the CRT product vendors? 16:41:29
8 Q Now about Brandsmart, was that regional?	16:39:40	8 A They are the enemy. We don't share data and we do not expect them to share data and that is not the way we do business." 16:41:33
9 A Brandsmart, definitely. Two different Brandsmarts, by the way.	16:39:40 16:39:44	9 Q MR. LAHAD: Vague. 16:41:38
10 Q Did Circuit City also view warehouse clubs such as Costco as competitors in that space?	16:39:46 16:39:49	10 A Not in general, no. 16:41:38
11 A Yes.	16:39:51	11 Q THE REPORTER: Did you say no? 16:41:49
12 Q Did Circuit City have a corporate policy with respect to gathering the competitive	16:39:54 16:39:57	12 A THE WITNESS: I just said yes to him. 16:41:49
		13 Q THE REPORTER: Because it sounded like a no. 16:41:50
		14 A Not in general, no. 16:41:50
		15 Q THE WITNESS: Yes, we discuss with a vendor that a competitor had a price that we needed to compete with and that we might need a lower cost in order to be able to be competitive. 16:41:50
		16 A Not in general, no. 16:41:54
		17 Q THE WITNESS: Yes, we discuss with a vendor that a competitor had a price that we needed to compete with and that we might need a lower cost in order to be able to be competitive. 16:41:58
		18 A Not in general, no. 16:42:03
		19 Q THE WITNESS: Yes, we discuss with a vendor that a competitor had a price that we needed to compete with and that we might need a lower cost in order to be able to be competitive. 16:42:05
		20 A Not in general, no. 16:42:05
		21 Q THE WITNESS: Did Circuit City have any knowledge regarding its competitors' target margins in CRT finished products? 16:42:05
		22 A Not in general, no. 16:42:08
		23 Q THE WITNESS: Yes, we discuss with a vendor that a competitor had a price that we needed to compete with and that we might need a lower cost in order to be able to be competitive. 16:42:11
		24 A Not in general, no. 16:42:13
		25 A Not in general, no. 16:42:15

52 (Pages 202 - 205)

VERITEXT REPORTING COMPANY

212-267-6868

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Page 206	Page 208
1 margins were rolled up to such a big high level 16:42:19	1 intelligence revealed that a competitor was 16:44:52
2 and included things like MDF and so on that you 16:42:23	2 pricing higher on a certain product, Circuit City 16:44:54
3 could not tell the kind of detail that you are 16:42:28	3 would raise its price to that level? 16:44:57
4 asking. 16:42:34	4 A Typically, we might raise our price 16:45:01
5 Q Where did you obtain the corporate 16:42:34	5 back. If we had lowered it in reaction to them, 16:45:06
6 reports from? 16:42:36	6 and they raised it, then we would go back to the 16:45:09
7 A From whatever. Someone releases their 16:42:37	7 price typically where we were before. 16:45:13
8 annual corporate report, it is a public record. 16:42:40	8 So we have that manufacturer's suggested 16:45:18
9 Q Was it anyone's particular 16:42:43	9 retail price that we are trying to sell the 16:45:21
10 responsibility to review these corporate reports 16:42:44	10 product for, and if the competition has gone back 16:45:23
11 and try to discern the margins? 16:42:48	11 to that price, or higher, then we are going to go 16:45:28
12 A Buyers would not review other 16:42:51	12 back typically to the manufacturer's suggested 16:45:31
13 competitors' reports. Our senior management like 16:42:55	13 retail price. 16:45:33
14 the president of the company, and so on, would, 16:43:04	14 (Whereupon, Deposition Exhibit 2846 is marked for 16:45:50
15 obviously, monitor the competition in that way 16:43:07	15 Identification.) 16:45:50
16 since that is the same sort of thing that he is 16:43:11	16 MR. BAVE: I am going to hand you what 16:45:50
17 communicating, but the buyers, no one said, "Let's 16:43:14	17 has been marked Exhibit 2846 which is Bates 16:45:51
18 go look through these reports and try to figure 16:43:19	18 labeled CC 0604919. Let me know when you 16:45:54
19 out what the other guy is paying." 16:43:22	19 have had a chance to review that. 16:46:13
20 Q How did the competitor information that 16:43:23	20 BY MR. BAVE: 16:46:26
21 was collected factor into Circuit City's retail 16:43:25	21 Q This is an email from somebody named 16:46:26
22 price decisions? 16:43:29	22 Derrick Matilla from November 12, 2007, do you 16:46:28
23 A As I said earlier, it could not factor 16:43:31	23 know who Derrick Matilla? 16:46:33
24 at all or we could choose to react to the price. 16:43:36	24 A Yes, but I think it is pronounced 16:46:36
25 Way in the majority of the time well 16:43:42	25 Matilla. 16:46:38
Page 207	Page 209
1 over 90 percent you are talking about a temporary 16:43:46	1 Q Excuse me. What was his position? 16:46:40
2 reaction of a week or less and then we would go 16:43:50	2 A He was a buyer. 16:46:42
3 back to our pricing. 16:43:55	3 Q In what department? 16:46:42
4 With as many stores as we had managing 16:43:58	4 A In the video or display department. 16:46:44
5 different prices it was difficult so you tried as 16:44:01	5 Q And he is addressing the email to Team. 16:46:47
6 much as possible to keep pricing the same. 16:44:06	6 Do you recognize the people in the "to / from" as 16:46:48
7 Q Did the pricing decisions at Circuit 16:44:08	7 a part of some team at Circuit City? 16:46:53
8 City vary by region on its CRT products? 16:44:11	8 A It appears to be the rest of the display 16:46:56
9 A As we discussed earlier you may have a 16:44:15	9 team, that same group. This is the other buyers, 16:47:03
10 different set of competitors in one market versus 16:44:19	10 some of the assistant buyers, some of the product 16:47:10
11 the other and one market may be more competitive 16:44:22	11 managers, so the rest of the people within the 16:47:13
12 because of that, so in that aspect, it did vary. 16:44:26	12 video, the display team. 16:47:17
13 Q And those variations between the regions 16:44:31	13 Q As a senior buyer was Derrick involved 16:47:20
14 was usually dictated by the competition in those 16:44:33	14 in collecting the competitor intelligence that we 16:47:23
15 regions? 16:44:37	15 have discussed today? 16:47:25
16 A Yes. 16:44:37	16 A Derrick would have been involved from 16:47:29
17 Q We have seen certain times where the 16:44:38	17 looking at a competitor's ad or when he is out and 16:47:31
18 collection of the competitive information has led 16:44:40	18 about going into the stores, but the 16:47:40
19 to Circuit City lowering its price to be more in 16:44:43	19 over-competitive intelligence that came from the 16:47:46
20 line with the competition, correct? 16:44:46	20 stores would have been more regular than what 16:47:50
21 A Correct. 16:44:48	21 Derrick would have done. That was not his primary 16:47:55
22 MR. LAHAD: Objection, misstatements 16:44:49	22 job to go out and find out. 16:47:59
23 testimony. 16:44:50	23 Q But he did receive the reports of the 16:48:01
24 BY MR. BAVE: 16:44:50	24 store employees that would go out and get a 16:48:04
25 Q Is it also true that if competitive 16:44:50	25 compilation -- 16:48:05

53 (Pages 206 - 209)

VERITEXT REPORTING COMPANY

212-267-6868

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516-608-2400

	Page 210	Page 212	
1 A Right, so he would be advised of issues	16:48:05	1 information will make its way up to the buyer	16:50:12
2 where we were not competitive.	16:48:09	2 based on the frequency, based on the severity	16:50:17
3 Q And his email reads, "that based on	16:48:12	3 of the difference in grabbing their attention	16:50:26
4 competitive intelligence we received last Friday,	16:48:15	4 from that viewpoint, but we also had policies	16:50:32
5 we have made the decision to change the price of	16:48:17	5 as you saw earlier that said, "If you see	16:50:35
6 the OLV 247 TFHD that will be featured in	16:48:19	6 this, do that."	16:50:38
7 Wednesday TV commercial and on the web as a web	16:48:25	7 BY MR. BAVE:	16:50:39
8 only deal."	16:48:28	8 Q Was it collected within one database	16:50:40
9 Do you see that?	16:48:29	9 within the company that people could go and see?	16:50:42
10 A Yes.	16:48:29	10 A No.	16:50:44
11 Q And he is recommending that based on	16:48:30	11 Q Yes? Sorry?	16:50:45
12 that competitive intelligence, they want to raise	16:48:32	12 A No. Not for this whole period of time.	16:50:47
13 the price from \$999 to \$1,999, do you see that?	16:48:35	13 There was a process for reacting. I hope I have	16:50:53
14 A Yes.	16:48:40	14 this correct. So we had a system where we	16:50:59
15 Q He predicts, "... that this increase in	16:48:41	15 downloaded the prices we discussed earlier, Cesar.	16:51:04
16 price will not compromise our traffic to our site	16:48:45	16 or an ad system, there were several different	16:51:08
17 and will result in additional \$500,000 to \$700,000	16:48:48	17 names for it.	16:51:11
18 in profitability." Do you see that?	16:48:53	18 So you could go in and see that data,	16:51:12
19 A Yes.	16:48:54	19 and say, "We reacted. So we ^{had} as far as	16:51:15
20 Q So based on the competitive intelligence	16:48:55	20 reporting goes. You are capturing your reaction,	16:51:24
21 he was able to discern that Circuit City was able	16:48:58	21 not the actual report."	16:51:27
22 to raise its price without damaging its profits,	16:49:01	22 Let me also note that buyers can see	16:51:30
23 right?	16:49:04	23 what prices their products are being sold at, and	16:51:33
24 A Yes.	16:49:04	24 if they see an anomaly, they can drill down and	16:51:39
25 MR. BAVE: You can put that document	16:49:08	25 find out where that occurred, and then they can go	16:51:43
	Page 211	Page 213	
1 aside for now.	16:49:10	1 in, and ask, "Why is Brandsmart \$100 less than	16:51:48
2 BY MR. BAVE:	16:49:12	2 everybody? Why is Brandsmart Market \$100 less	16:51:54
3 Q Was the competitors' pricing information	16:49:12	3 than everybody else is because Brandsmart has this	16:51:57
4 that was collected an important factor in Circuit	16:49:13	4 price for \$100 below."	16:52:00
5 City's price center?	16:49:17	5 Q Today we have discussed competitive	16:52:02
6 MR. LAHIAD: vague.	16:49:20	6 shopping as one of the ways Circuit City gathered	16:52:04
7 THE WITNESS: Only important on a short	16:49:22	7 competitive intelligence, is that right?	16:52:07
8 term market by market store by store type of	16:49:26	8 A Yes.	16:52:08
9 information.	16:49:29	9 Q Did Circuit City have specific	16:52:11
10 Competitors' advertising pricing was	16:49:31	10 guidelines on what to do and what not to do when	16:52:13
11 probably more important because of the	16:49:34	11 an employee was shopping at a competitor's store?	16:52:15
12 visibility of it. I hope that answers your	16:49:37	12 A I am not sure exactly what you are	16:52:20
13 question.	16:49:44	13 asking.	16:52:22
14 BY MR. BAVE:	16:49:45	14 Q You mentioned certain training that the	16:52:24
15 Q We discussed a couple different types of	16:49:45	15 store employees went through. Was a component of	16:52:26
16 ways that competitive information was collected	16:49:47	16 that how to handle or how to actually go and do	16:52:30
17 within Circuit City, right?	16:49:51	17 this competitive shopping in the different	16:52:33
18 A Correct.	16:49:51	18 regions?	16:52:36
19 Q How was this competitive intelligence	16:49:52	19 A Yes, we did not want to be disruptive in	16:52:36
20 shared within the corporate structure of Circuit	16:49:55	20 any way, shape or form, and we were not out to	16:52:42
21 City?	16:49:58	21 sabotage anybody.	16:52:46
22 MR. LAHIAD: Asked and answered.	16:49:58	22 We were out to get the information with	16:52:47
23 THE WITNESS: Since the person who is	16:49:59	23 the least amount of interaction that could get	16:52:50
24 ultimately responsible for the product and	16:50:04	24 away with.	16:52:57
25 the price of the product is the buyer, that	16:50:07	25 They were specifically told, "Do not	16:52:58

54 (Pages 210 - 213)

VERITEXT REPORTING COMPANY

212-267-6868

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516-608-2400

Page 214	Page 216
1 discuss anything that Circuit City does with 16:53:03	1 competitor's ad information before it got public. 16:55:49
2 anybody else or how they run their business." We 16:53:06	2 Q It would be helpful to know if a 16:55:52
3 didn't do that. 16:53:11	3 competitor is going to be running a coming 16:55:53
4 Q Were they given a check list of products 16:53:12	4 promotion, correct? 16:55:55
5 to go through on certain store visits? 16:53:14	5 A It would be helpful, but in general 16:55:55
6 A As you saw in one of the ones where it 16:53:17	6 that's not the way we did business. 16:56:01
7 says, "sign a calendar", they would be given a 16:53:19	7 Q In general, are there instances you are 16:56:04
8 section of product or a description of product 16:53:25	8 aware of where that type of information was 16:56:06
9 like, "Go shop all the projection televisions. Go 16:53:29	9 obtained on store shops? 16:56:08
10 shop all the CRT televisions. Go shop a category 16:53:31	10 A Not in reference to CRT. I was in a 16:56:12
11 or class or some subset thereof," and if there was 16:53:36	11 store where a customer walked in with a 16:56:17
12 some reason they might say, "The last three weeks 16:53:42	12 competitor's ad that had not been published yet, 16:56:20
13 in a row this brand has been below a price. Go 16:53:46	13 and he wanted me to match the price and there's 16:56:24
14 find out what's going on with that brand with this 16:53:50	14 not much I can do about it, he has brought it to 16:56:28
15 competitor." 16:53:52	15 me. 16:56:31
16 Q During these competitive shops, did 16:53:54	16 Q Some of the promotional activities 16:56:31
17 Circuit City employees ever purchase a good from a 16:53:57	17 during certain seasons were released pretty far in 16:56:34
18 competing store? 16:53:59	18 advance of the date, for instance, maybe Black 16:56:36
19 A Not as policy. I don't know of any case 16:54:03	19 Friday, is that right? 16:56:39
20 where they would have. 16:54:10	20 A If it's out there on the web, we are out 16:56:41
21 Q So it was purely an information 16:54:12	21 there looking at it. If it is public information, 16:56:42
22 gathering exercise? 16:54:14	22 we are doing our business to find out. 16:56:45
23 A Yes. 16:54:14	23 Q Because that would allow you to know 16:56:47
24 Q In addition to the retail pricing, what 16:54:15	24 what your competitors are going to be charging up 16:56:48
25 other factors were the employees observing when 16:54:17	25 in upcoming periods? 16:56:50
Page 215	Page 217
1 they would do these competitive shops? 16:54:20	1 A Correct. 16:56:52
2 A You are wanting to know what the 16:54:23	2 Q That will allow you to react to it 16:56:53
3 customer experience is and you are trying to 16:54:26	3 better? 16:56:53
4 compare that with the Circuit City experience. 16:54:29	4 A Correct. 16:56:54
5 For example, you might get as close as 16:54:34	5 Q Did Circuit City employees ever collect 16:56:56
6 saying, "If I buy this, how fast can you deliver 16:54:37	6 information that was not readily ascertainable in 16:57:00
7 it to me?" You would go, "Our delivery is backed 16:54:41	7 walking around the store? 16:57:02
8 up for a week and he can deliver it today, so we 16:54:45	8 MR. LAHAD: Asked and answered. 16:57:04
9 are at a disadvantage." 16:54:48	9 THE WITNESS: By posing as customers 16:57:06
10 You're trying to understand everything 16:54:50	10 they might get additional information, yes. 16:57:10
11 that has to do with the customer experience. 16:54:52	11 BY MR. BAVE: 16:57:12
12 Do they have the product in stock? Do 16:54:55	12 Q They would do that by having discussions 16:57:13
13 they want to sell it? Are they doing everything 16:55:00	13 with the competitors' source sales staff? 16:57:15
14 they can tell you that it is a horrible product 16:55:04	14 A I would not call it discussions. They 16:57:17
15 or that it is the best thing since sliced bread? 16:55:09	15 would go in and say, "I am looking for a 16:57:20
16 What are they trying to sell to go with 16:55:15	16 television," and role play the customers. 16:57:23
17 it and what are they saying about competitors like 16:55:17	17 Q And they were not going in representing 16:57:27
18 ourselves? 16:55:23	18 that they are from Circuit City. They would go in 16:57:29
19 Q Is one of the things they would check is 16:55:24	19 and act -- 16:57:30
20 upcoming promotional activities that the store is 16:55:26	20 A No. 16:57:30
21 going to offer? 16:55:29	21 Q -- as a person off the street? 16:57:31
22 A Yes, I can't say that one sells, one 16:55:34	22 A No. Sorry interrupt you. No. 16:57:31
23 person doing a shop might say is it going to go on 16:55:38	23 Q They would remove their Circuit City 16:57:37
24 sale, but that was not our direction. 16:55:41	24 uniforms so they would look like a person walking 16:57:39
25 We were not trying to get our 16:55:44	25 in off the street? 16:57:43

55 (Pages 214 - 217)

VERITEXT REPORTING COMPANY

212-267-6868

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516-608-2400

Page 218		Page 220	
1 A Ycs.	16:57:43	1 BY MR. BAVE:	17:01:01
2 Q Was the inventory level that a	16:57:46	2 Q You mentioned earlier memos on the	17:01:01
3 competitor's store had readily ascertainable when	16:57:47	3 competitive shops, right?	17:01:04
4 walking in to the retail store?	16:57:51	4 A Yes.	17:01:04
5 MR. LAHAD: Say that again.	16:57:54	5 Q Does this follow the format of	17:01:05
6 THE WITNESS: It depends on the	16:57:55	6 competitive shop reports that you have seen?	17:01:08
7 retailer. If they have stocked their product	16:57:57	7 A No, because this is a buyer or an	17:01:10
8 on the floor, then it is. If they have a	16:58:01	8 assistant buyer or somebody in the corporate team	17:01:15
9 hidden warehouse, it is not.	16:58:04	9 reporting back to a buyer.	17:01:19
10 BY MR. BAVE:	16:58:06	10 This is, yes, it's a type of shopping	17:01:24
11 Q When they were walking around the	16:58:07	11 report, but it is not the most common kind.	17:01:33
12 stores, how would they record the information that	16:58:08	12 This is a market visit where because you	17:01:36
13 they were recording on?	16:58:10	13 would only do a market visit like this because the	17:01:40
14 MR. LAHAD: Vague.	16:58:13	14 sales in that market were doing poorly.	17:01:44
15 THE WITNESS: There were lots of	16:58:15	15 Because the sales were doing poorly they	17:01:47
16 different tactics. People would talk to	16:58:15	16 sent this group of people and it is almost always	17:01:50
17 themselves, and end up having a recorder in	16:58:19	17 that case, they sent this group of people in to	17:01:55
18 their pocket.	16:58:23	18 find out what the heck is going on.	17:01:55
19 Some people would call their own	16:58:24	19 Q Under the Best Buy heading on the first	17:01:59
20 answering machine and talk to themselves,	16:58:27	20 page there under subsection one pricing, they are	17:02:02
21 but the amount of pricing that we were	16:58:29	21 writing about asking an associate to check on the	17:02:05
22 shopping was generally limited enough that	16:58:33	22 inventory of an item, do you see that?	17:02:08
23 all you were doing was looking for	16:58:36	23 A Yes.	17:02:13
24 exceptions,	16:58:38	24 Q So that indicates that the employees	17:02:14
25 For example, I would go in and shop for	16:58:41	25 (sic) asked the employee to go back and check on	17:02:15
Page 219		Page 221	
1 competition and I would walk out, and as	16:58:44	1 the inventory?	17:02:18
2 soon as I walked out, I would write down the	16:58:46	2 A Yes.	17:02:19
3 four exceptions that I found because you	16:58:50	3 MR. LAHAD: Calls for speculation, lacks	17:02:20
4 would have very few in general.	16:58:52	4 foundation.	17:02:23
5 BY MR. BAVE:	16:58:55	5 BY MR. BAVE:	17:02:23
6 Q In instances where employees were using	16:58:55	6 Q Did you say "yes," sir?	17:02:23
7 recording devices, were those provided by Circuit	16:58:56	7 A Yes.	17:02:24
8 City?	16:59:01	8 Q Have you ever heard of a market reaction	17:02:25
9 A I don't know.	16:59:04	9 report in association with Best Buy?	17:02:31
10 Q Did Circuit City keep the recordings	16:59:06	10 A I have not heard it specifically for	17:02:35
11 that these employees made during their competitive	16:59:09	11 Best Buy. It is sort of a common term.	17:02:38
12 store visits?	16:59:13	12 Q What does the term mean to you?	17:02:41
13 A No, No, this would have been an	16:59:14	13 A It means that it sounds like it means	17:02:43
14 individual deciding that that was the way that	16:59:18	14 that it is their version of what we call CTC or	17:02:48
15 made it easier for themselves.	16:59:19	15 our reaction.	17:02:52
16 (Whereupon, Deposition Exhibit 2847 is marked for	16:59:22	16 Q Would Circuit City in the normal course	17:02:55
17 Identification.)	16:59:22	17 of business have access to Best Buy's market	17:02:57
18 MR. BAVE: Let me mark one more quickly.	16:59:22	18 reaction report?	17:03:00
19 I am handing you what has been marked as	16:59:46	19 A No.	17:03:00
20 Exhibit 2847 which is Bates No. CC 0397160.	16:59:46	20 Q So that in this instance they were able	17:03:01
21 THE WITNESS: How much of this do you	17:00:54	21 view it because they asked the sales clerk to go	17:03:03
22 need me to read?	17:00:55	22 in the back and check on inventory?	17:03:04
23 MR. BAVE: I will direct you to specific	17:00:56	23 MR. LAHAD: Misstates previous	17:03:08
24 portions. Let me know when you are	17:00:57	24 testimony, lacks foundation, calls for	17:03:10
25 familiarized overall.	17:01:00	25 speculation.	17:03:12

56 (Pages 218 - 221)

VERITEXT REPORTING COMPANY

212-267-6868

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516-608-2400

		Page 222	Page 224	
1	THE WITNESS: And I would just be	17:03:14	1 to buy the product you would also want to	17:06:03
2	speculating. I believe that --	17:03:19	2 know if they have it in stock, so as	17:06:05
3	MR. ROSS: If you are speculating, don't	17:03:24	3 testified earlier, knowing in stock levels it	17:06:08
4	testify, but if you know about it, then you	17:03:25	4 is to a degree it is publicly available which	17:06:12
5	can testify about it.	17:03:25	5 is, "Can I buy this?" is important, yes, I	17:06:18
6	THE WITNESS: No.	17:03:26	6 mean, it is helpful.	17:06:21
7	BY MR. BAVE:	17:03:26	7 BY MR. BAVE:	17:06:22
8	Q This information about how Best Buy	17:03:27	8 Q How often did Circuit City run these	17:06:22
9	conducted its shops that is contained in this	17:03:29	9 more intense competitive shops with its	17:06:25
10	report, that would be helpful information to	17:03:31	10 merchandising team?	17:06:28
11	Circuit City, correct?	17:03:34	11 A You could go and be somewhat random, but	17:06:31
12	A It could be, yes.	17:03:36	12 you can go for a very long period of time. You	17:06:37
13	Q If you would turn to the next page under	17:03:38	13 may not have any in a year or you may have based	17:06:39
14	"Incredible Universe" have you ever heard of	17:03:44	14 on business, say, "We are going to send out two or	17:06:45
15	Incredible Universe?	17:03:46	15 three teams to four or five markets this week."	17:06:48
16	A Yes.	17:03:48	16 There was no rhyme or reason. Some of	17:06:54
17	Q What is Incredible Universe?	17:03:48	17 it had to do with workload and did you have the	17:06:56
18	A Incredible Universe was a division of	17:03:49	18 time and the resources to deploy it this way.	17:07:00
19	Radio Shack Stores that were their super stores	17:03:53	19 Q I just want to touch the low price	17:07:04
20	basically. They were larger than Circuit City	17:03:57	20 guaranty that we discussed a little bit earlier	17:07:07
21	Stores. They were approximately the size of	17:04:00	21 today.	17:07:09
22	Brandsmart Stores.	17:04:02	22 MR. LAHAD: Before you get there, can we	17:07:09
23	Q What is your understanding of the first	17:04:03	23 take a break or do you have a lot left?	17:07:11
24	bullet there under "Pricing" what is going on?	17:04:05	24 MR. BAVE: Just a few more questions and	17:07:16
25	A My understanding would be that they	17:04:36	25 then I will be done if you want to wait. If	17:07:16
		Page 223	Page 225	
1	represented that they had been to the Best Buy and	17:04:39	1 you can wait, sir?	17:07:17
2	that they had seen this price on a 31 inch GE, and	17:04:42	2 THE WITNESS: I can wait.	17:07:18
3	would Incredible Universe match it, and they said	17:04:47	3 BY MR. BAVE:	17:07:21
4	that they would, but since they were not able to	17:04:52	4 Q Before Circuit City would agree to match	17:07:21
5	verify that Best Buy actually had them in	17:04:56	5 a price, they have to verify their competitor's	17:07:26
6	inventory, they did not match it.	17:04:58	6 price, correct, under the low price guaranty?	17:07:30
7	Q Was it normal during the course of the	17:05:00	7 A Yes, the low-price guaranty specifically	17:07:33
8	competitive shop that you test another	17:05:03	8 talked about an advertised price so the competitor	17:07:37
9	competitor's price match policies?	17:05:06	9 advertised the price we would do it.	17:07:42
10	A You would want to understand, and this	17:05:08	10 That part was easy to verify and if we	17:07:46
11	is very intense type of shopping. When you say	17:05:10	11 were matching a price because we were selling the	17:07:50
12	"normal" this is extraordinary.	17:05:15	12 product, then you look for other ways to try to	17:07:54
13	Because you have got to put together a	17:05:21	13 verify the price.	17:08:00
14	group of merchants and send them out to a market	17:05:24	14 Q It also would verify that the competitor	17:08:01
15	to understand what's going on in the market and	17:05:29	15 had the item in stock before you matched the	17:08:03
16	understanding how the competition reacts and how	17:05:32	16 price, is that right?	17:08:06
17	they drop price or anything that they do that we	17:05:41	17 A Yes, and that is tough because you are a	17:08:06
18	don't know that they are doing it would be	17:05:44	18 person who is doing the confirmation if they are	17:08:15
19	important.	17:05:46	19 talking about reaction type of time.	17:08:23
20	Q Was it extraordinary to ask competitors	17:05:47	20 You have got a customer standing there,	17:08:25
21	to go check inventory?	17:05:50	21 so there's only so much you can do. Maybe the	17:08:26
22	MR. LAHAD: Misstates the testimony.	17:05:53	22 customer gives you card that says that they have	17:08:31
23	THE WITNESS: It wouldn't be	17:05:55	23 got a quote on this product.	17:08:33
24	extraordinary to ask them to check inventory	17:05:57	24 You can call the competitor, and say, "I	17:08:36
25	because if you are a customer and you wanted	17:05:59	25 am interested in so and so and can I buy it?"	17:08:40

	Page 226	Page 228
1 Whether you got truthful information or 2 not it is tough.	17:08:45	17:15:29
3 Once you're able to go out online and 4 find out whether the customer had the product	17:08:53	17:15:30
5 because you could buy it through the Internet that 6 was very different.	17:08:58	17:15:37
7 Q So one of the ways Circuit City would 8 verify a competitor's price was to pick up the 9 phone and call that competitor to get the price?	17:09:02	17:15:42
10 A Again, acting as a customer saying, 11 "Look, I was in earlier, and I saw this on sale 12 for so and so, is it still on sale?" They might 13 say, "I don't know. We are busy. Come see for 14 yourself." They might say, "Give me a minute and 15 I will go find out," and so on.	17:09:12	17:15:46
16 Q Was it necessary to act as a potential 17 customer because the competitor would not give the 18 information if it was circuit identified as the 19 caller?	17:09:35	17:15:49
20 MR. LAHAD: Calls for speculation.	17:09:43	17:16:08
21 THE WITNESS: Right. We would never 22 identify ourselves as Circuit City "and I 23 want to know your price." That was not our 24 policy practice. Just not the way you do 25 business.	17:09:46	17:16:11
	17:09:48	17:16:14
	17:09:57	17:16:19
	Page 227	Page 229
1 MR. BAVE: Thank you. Those are all the 2 questions I have.	17:09:58	17:16:23
3 THE VIDEOGRAPHER: The time is 4 approximately 5:10. We are off the record.	17:10:01	17:16:24
5 (On resuming after a short recess.)	17:10:03	17:16:25
6 THE VIDEOGRAPHER: The time is 7 approximately 5:14 p.m. We are back on 8 record.	17:14:45	17:16:33
9 MS. ARGUELLO: Hi, Mr. Deason.	17:14:51	17:16:36
10 THE WITNESS: Hi.	17:14:51	17:16:38
11 MS. ARGUELLO: My name is Sofia 12 Arguello. I work for the law firm Winston & 13 Strawn and we represent the Panasonic 14 defendants in this litigation.	17:14:54	17:16:43
15 EXAMINATION BY MS. ARGUELLO:	17:15:00	17:16:46
16 Q I just have a few more questions for 17 you. We mentioned earlier that Circuit City had 18 promotional programs with many of its vendors.	17:15:02	17:16:50
19 Do you recall whether it had any 20 promotional programs with Panasonic North America?	17:15:07	17:16:52
21 A When you saw promotional programs, are 22 you talking about MDF funds?	17:15:16	17:16:56
23 Q I am talking about MDF funds or volume 24 rebates, or promotional allowances, any of the 25 programs that we discussed earlier today?	17:15:17	17:16:59
	17:15:19	17:17:03
	17:15:23	17:17:13
	17:15:27	17:17:18

Page 230		Page 232	
1 would happen like, "Hey, you're advertising	17:18:22	I know how to answer the frequency.	17:21:01
2 Samsung all the time and you are not advertising	17:18:25	2 Q No, that was helpful.	17:21:03
3 Panasonic. Why?" Well, it's, "They give us more	17:18:28	3 A But it is a standard part of the	17:21:04
4 ad money."	17:18:30	4 business that during the life cycle of a product,	17:21:06
5 Q Would Circuit City ever ask Panasonic	17:18:32	5 if it is not selling that there may be a reaction.	17:21:12
6 North America to match the non-price terms of	17:18:36	6 Q Would Circuit City in these instances go	17:21:14
7 other vendors?	17:18:39	7 to a vendor like Panasonic North America, and tell	17:21:19
8 A In that same sort of way, they would	17:18:43	8 them, "Your product is not selling, so we should	17:21:22
9 say, "We would like you to give us X amount of	17:18:46	9 renegotiate are non-cost terms?"	17:21:24
10 percentage," and that would make you competitive.	17:18:53	10 A Yes, The early part of this period -	17:21:29
11 The reason I am hesitating is because we	17:18:59	11 the very early part of this period - my	17:21:33
12 are not going to tell them what the otherwise guys	17:19:02	12 understanding was that the vendors could not see	17:21:36
13 are doing.	17:19:03	13 our sales data, but for the majority of this	17:21:42
14 Not in non-disclosure agreements. We	17:19:09	14 period they could.	17:21:45
15 are not going to say, "The other guy has given me	17:19:10	15 So we did not even have to tell them	17:21:46
16 \$2 million. You got to give me \$2 million as the	17:19:12	16 what the sales were. They knew the sales were not	17:21:48
17 way we train our buyers." Just, again, that is	17:19:16	17 good.	17:21:51
18 not the normal way we do business.	17:19:20	18 Q Do you know what Circuit City's profit	17:21:55
19 Q Would it be fair to say that you would	17:19:24	19 margins were on finished products purchased from	17:21:58
20 communicate that other vendors are offering more	17:19:26	20 Panasonic North America?	17:22:01
21 competitive rebates as opposed to giving out	17:19:30	21 A No.	17:22:02
22 specific percentage?	17:19:33	22 Q Did Circuit City control which models it	17:22:03
23 A Yes.	17:19:33	23 wanted to have the MDF funds applied to?	17:22:10
24 Q In your experience, how often would	17:19:34	24 MR. LAHAD: Vague.	17:22:15
25 Panasonic North America's non-price terms change	17:19:40	25 THE WITNESS: I don't know what you mean	17:22:18
Page 231		Page 233	
1 over time?	17:19:44	1 by applied to.	17:22:19
2 MR. LAHAD: To be clear. When you say	17:19:46	2 BY MS. ARGUELLO:	17:22:20
3 "price," you mean price or costs as we have	17:19:47	3 Q When Circuit City negotiated for an MDF	17:22:20
4 been using it today?	17:19:51	4 fund with a vendor, did it specify on what	17:22:24
5 MS. ARGUELLO: I am saying procurement	17:19:52	5 specific product it was going to spend that MDF	17:22:30
6 costs, but I was saying pricing from	17:19:54	6 fund?	17:22:33
7 Panasonic North America, so we can go either	17:19:56	7 A They could. They wouldn't necessarily.	17:22:34
8 way.	17:19:59	8 Q In the cases where they would not	17:22:41
9 Let me say procurement costs to keep	17:19:59	9 specify what product, would they just generally	17:22:44
10 consistent with earlier.	17:20:01	10 just ask for an MDF fund?	17:22:45
11 MR. ROSS: That is the way we have been	17:20:02	11 A Yes.	17:22:49
12 doing it for seven hours.	17:20:03	12 Q Did Circuit City ever resist Panasonic	17:22:49
13 THE WITNESS: Can you restate it?	17:20:04	13 North America's price proposals and insist on a	17:22:56
14 BY MS. ARGUELLO:	17:20:05	14 lower price per specific models?	17:22:59
15 Q Yes. How often did Panasonic North	17:20:05	15 A As I discussed earlier, we would	17:23:02
16 America's non-cost terms change over time?	17:20:09	16 certainly insist that if they did not do it that	17:23:08
17 A Typically, you had an overall program	17:20:17	17 we would not buy the product anymore, but we	17:23:12
18 that would last for a year, and again, they would	17:20:21	18 cannot physically make you do it.	17:23:14
19 be reviewed at about a six month break based on	17:20:25	19 Q Did Circuit City have established price	17:23:22
20 sell through, but it is constant from a viewpoint	17:20:31	20 points for purchasing models which it would tell	17:23:25
21 again of if something is not selling, then it	17:20:35	21 Panasonic North America it had to meet in order	17:23:28
22 would be common for Panasonic or any other vendor	17:20:41	22 for Panasonic North America to get the business?	17:23:30
23 to do some sort of reaction and that would end up	17:20:45	23 MR. LAHAD: Vague.	17:23:34
24 being ad money, sales money, that sort of thing.	17:20:50	24 THE WITNESS: Price points meaning what?	17:23:35
25 I can't give you a number or I don't	17:20:55	25 BY MS. ARGUELLO:	17:23:38

59 (Pages 230 - 233)

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212-267-6868

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516-608-2400

Page 234	Page 236
1 Q For example, did Circuit City ever say. 17:23:38	1 A Yes. 17:26:22
2 "You have to meet a price point of \$100 or you 17:23:39	2 Q Were there any other factors other than 17:26:26
3 will not get this business?" 17:23:46	3 competitive circumstances? 17:26:30
4 MR. LAHAD: Are you talking price point. 17:23:48	4 A The manufacturers' suggested retail 17:26:31
5 Cost? 17:23:49	5 price would be another factor. Again, whether we 17:26:34
6 THE WITNESS: (No response.) 17:23:49	6 had inventory excess or shortage, would be the 17:26:39
7 BY MR. ROSS: 17:23:49	7 other factor. 17:26:44
8 Q Did Circuit City ever tell Panasonic 17:23:53	8 Q To the extent you could implement those 17:26:51
9 North America, "You have to meet a particular cost 17:23:56	9 cost increases into your price increases, would 17:26:54
10 point," for example, "\$100, or you will not get 17:24:01	10 there generally be a lag between the change and 17:27:00
11 this business?" 17:24:04	11 procurement costs and the change in retail price? 17:27:02
12 A Yes. 17:24:05	12 MR. LAHAD: Vague. 17:27:05
13 Q As a general matter, when Circuit City's 17:24:15	13 THE WITNESS: I am confused. Can you 17:27:07
14 procurement costs for a given Circuit City product 17:24:18	14 ask me that again? I am sorry. 17:27:20
15 changed, did Circuit City change the price of the 17:24:23	15 BY MS. ARGUELLO: 17:27:21
16 CRT product accordingly to its customers? 17:24:24	16 Q In the circumstances where an increase 17:27:22
17 MR. LAHAD: Asked and answered. 17:24:29	17 in procurement costs was able to translate into an 17:27:26
18 THE WITNESS: To re-answer it. We may 17:24:31	18 increase in retail price, was there a lag between 17:27:29
19 or may not. 17:24:34	19 those two increases or did it happen 17:27:33
20 BY MS. ARGUELLO: 17:24:37	20 simultaneously? 17:27:37
21 Q In what circumstances would you do that? 17:24:38	21 MR. LAHAD: Same objection. 17:27:38
22 MR. LAHAD: This is asked and answered 17:24:43	22 THE WITNESS: It could be either way. 17:27:40
23 as well. 17:24:44	23 BY MS. ARGUELLO: 17:27:41
24 THE WITNESS: Right. Based on 17:24:44	24 Q In which cases would you be able to do 17:27:56
25 competitive environment. 17:24:47	25 it simultaneously? Can you think of any examples? 17:27:59
Page 235	Page 237
1 BY MS. ARGUELLO: 17:24:50	1 A If we were told that manufacturers' 17:28:02
2 Q In your experience, what is generally 17:24:51	2 suggested retail price was going down by \$50, and 17:28:06
3 the scale of a cost decrease? 17:25:03	3 that the cost was going down by \$75, we would key 17:28:09
4 MR. LAHAD: Vague. 17:25:08	4 that in, and say, "Let's do this instantly," and 17:28:14
5 BY MS. ARGUELLO: 17:25:09	5 it happened to match our standard downloads for 17:28:19
6 Q Of a cost decrease in a CRT finished 17:25:09	6 the stores, so it wasn't two days before the next 17:28:24
7 product? Are they relatively small like a 17:25:13	7 download, or one day after, or something like 17:28:31
8 dollar or are they larger? 17:25:17	8 this. 17:28:34
9 MR. GRALEWSKI: Objection, form. 17:25:21	9 It had to match the period that we 17:28:35
10 THE WITNESS: I don't know that I could 17:25:24	10 downloaded. We did not always download every day. 17:28:38
11 generalize beyond generally we are not 17:25:29	11 Q If price changes were to be implemented, 17:28:51
12 dealing with a dollar because of all of the 17:25:34	12 what steps were taken by Circuit City? 17:28:53
13 work involved. 17:25:37	13 A If price changes were to be made? 17:28:58
14 MR. LAHAD: Sorry, you said "aren't 17:25:39	14 Q Correct. 17:29:01
15 dealing with a dollar?" 17:25:40	15 A The steps are to download it in our 17:29:01
16 THE WITNESS: We are not dealing with 17:25:41	16 system so that it shows up and gets communicated 17:29:08
17 something that small because it is a lot of 17:25:42	17 to the stores, and again, they have set tagging 17:29:11
18 work to do for a dollar, but it could happen 17:25:45	18 days, or set times to tag, so you want to try to 17:29:15
19 and it does happen. 17:25:51	19 stay with that cycle so that you do not have a 17:29:19
20 BY MS. ARGUELLO: 17:25:53	20 price that is not tagged properly, and other than 17:29:22
21 Q You said earlier that sometimes Circuit 17:25:53	21 that, I do not know what other types of steps you 17:29:27
22 City could increase the price of the finished 17:26:10	22 are talking about. 17:29:30
23 product to the customer by the increase in the 17:26:14	23 Q Was it the same across all retail stores 17:29:32
24 procurement costs, but it generally depended on 17:26:17	24 if you did implement a price change? 17:29:36
25 competitive circumstance, is that correct? 17:26:21	25 A We had the ability to download it for 17:29:38

60 (Pages 234 - 237)

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212-267-6868

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516-608-2400

Page 238		Page 240	
1 everybody if we wanted to or to download it for	17:29:41	1 questions on 240. It is beyond the scope.	17:31:58
2 one person if we wanted to.	17:29:44	2 MR. LAHAD: Yes.	17:32:00
3 Q How were stores notified of the price	17:29:46	3 MR. ROSS: Next.	17:32:00
4 change?	17:29:49	4 MR. LAHAD: And maybe on the same R-240,	17:32:02
5 A They knew that on a standard day that	17:29:49	5 is starts with Circuit City's claims were	17:32:03
6 they would get a new PSB and that they need to go	17:29:52	6 told at American Pipe. Is that what your 240	17:32:04
7 price to that PSB.	17:29:56	7 is?	17:32:08
8 Q Would the same price change have been	17:30:00	8 MR. ROBERTS: I am not asking about	17:32:08
9 made online?	17:30:02	9 American Pipe, sir.	17:32:09
10 A It could be and it could not be.	17:30:03	10 BY MR. ROBERTS:	17:32:10
11 MS. ARGUELLO: I have no further	17:30:10	11 Q If you will see, sir, in paragraph 240,	17:32:10
12 questions.	17:30:11	12 it states that claims were filed in this action in	17:32:15
13 MR. ROSS: Any other defendants on the	17:30:13	13 November 2007. Do you see that first entry there?	17:32:20
14 phone?	17:30:14	14 THE WITNESS: Do you want me to answer?	17:32:25
15 MR. ROBERTS: Yes, this is John Roberts,	17:30:16	15 MR. ROSS: No, it is beyond the scope.	17:32:29
16 the Thomson defendant.	17:30:16	16 Sorry. He is not a personal witness today.	17:32:30
17 EXAMINATION BY MR. ROBERTS	17:30:20	17 He is a 30(b)(6). It is not within the	17:32:32
18 Q I just have a couple quick questions.	17:30:20	18 scope.	17:32:33
19 Thank you, Mr. Deason. When did Circuit City	17:30:22	19 MR. ROBERTS: I am asking him questions	17:32:34
20 discover the existence of the alleged price	17:30:26	20 within the subject of Topic 20.	17:32:36
21 conspiracy in the CRT industry that is the subject	17:30:29	21 MR. ROSS: No, I had conversations with	17:32:44
22 of its complaint in this case?	17:30:31	22 Ms. Lin about this. You could talk about	17:32:46
23 A I do not know.	17:30:33	23 width, when it was at Circuit City, but we	17:32:48
24 MR. ROBERTS: I would ask my colleague,	17:30:38	24 are not talking about anything after that.	17:32:51
25 Ms. Lin, if she could hand the witness the	17:30:38	25 If you want to ask him what he knew	17:32:54
Page 239		Page 241	
1 exhibit that I asked her to bring, I would	17:30:42	1 when he was at Circuit City about any kind	17:32:55
2 really appreciate that, and to mark it as the	17:30:45	2 of suspicions or knowledge of a conspiracy,	17:32:58
3 next exhibit.	17:30:47	3 as we say that in our complaint, you can go	17:33:03
4 (Whereupon, Deposition Exhibit 2849 is marked for	17:30:47	4 ahead, otherwise it is beyond the scope.	17:33:06
5 Identification.)	17:30:47	5 MR. ROBERTS: I will represent to you,	17:33:10
6 MS. LIN: I will hand the witness a	17:30:51	6 sir, that the first complaints in this action	17:33:12
7 document marked Exhibit 2849.	17:30:51	7 were filed in November 2007.	17:33:14
8 THE WITNESS: Can I ask who this	17:30:58	8 BY MR. ROBERTS:	17:33:18
9 gentleman represents?	17:30:59	9 Q Immediately after those complaints were	17:33:18
10 MS. LIN: He represents Thomson.	17:31:02	10 filed, what action did Circuit City take to	17:33:21
11 THE WITNESS: Thomson, okay. Thank	17:31:03	11 discover if it had any claims against the Thomson	17:33:24
12 you.	17:31:03	12 defendants?	17:33:28
13 MR. GAWLEY: This is Michael Gawley	17:31:03	13 MR. ROSS: Beyond the scope.	17:33:28
14 from Kirkland. What is the Bates stamp on	17:31:03	14 MR. ROBERTS: Sorry, was there an	17:33:29
15 that exhibit?	17:31:08	15 objection? I could not hear it.	17:33:29
16 MS. LIN: It is the Thomson complaint,	17:31:11	16 MR. ROSS: I am instructing him not to	17:33:33
17 the Circuit City complaint against Thomson	17:31:12	17 answer. It is beyond the scope.	17:33:44
18 and Mitsubishi. It doesn't have a Bates.	17:31:15	18 BY MR. ROBERTS:	17:33:46
19 MR. GAWLEY: Thank you.	17:31:18	19 Q When did Circuit City first suspect that	17:33:56
20 BY MR. ROBERTS:	17:31:19	20 the Thomson defendants were participants in the	17:33:59
21 Q As has been represented to you, this is	17:31:26	21 alleged conspiracy?	17:34:02
22 the complaint that Circuit City filed against the	17:31:28	22 MR. ROSS: Same instruction.	17:34:05
23 Thomson defendants in November 2013. If you could	17:31:30	23 MR. ROBERTS: Sir, this is squarely	17:34:14
24 please turn to paragraph 240 in that exhibit.	17:31:34	24 within Topic 20, as to when they first	17:34:15
25 MR. ROSS: He is not going to answer any	17:31:58	25 suspected the existence of the alleged	17:34:18

61 (Pages 238 - 241)

VERITEXT REPORTING COMPANY

212-267-6868

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516-608-2400

Page 242		Page 244		
1	conspiracy. I don't understand why you are	17:34:21	1 investigation of CRT product prices?	17:37:14
2	objecting.	17:34:22	2 MR. LAHAD: Asked and answered.	17:37:19
3	MR. ROSS: You were not part of the	17:34:22	3 THE WITNESS: (No response.)	17:37:20
4	negotiations of the topics and my discussions	17:34:24	4 BY MR. ROBERTS:	17:37:20
5	with Ms. Lin, sorry.	17:34:25	5 Q You can answer, sir.	17:37:29
6	We are not going beyond those	17:34:29	6 A I haven't seen anything that would make	17:37:32
7	discussions. The discussions were that the	17:34:32	7 me believe that they had enough information to	17:37:35
8	witness could testify as to any knowledge	17:34:33	8 warrant an investigation.	17:37:39
9	that he or Circuit City had prior to the	17:34:37	9 Q If you will look quickly, again, at	17:37:47
10	liquidation while he was there and he has	17:34:41	10 Exhibit 2840. This was the exhibit that Ms. Lin	17:37:51
11	answered that today and the answer was none.	17:34:46	11 was showing you earlier today.	17:37:53
12	Anything after that is beyond the scope.	17:34:49	12 MR. LAHAD: Sorry, which exhibit?	17:37:58
13	BY MR. ROBERTS:	17:34:58	13 MR. ROBERTS: 2840.	17:38:01
14	Q Before November 2007, did Circuit City	17:34:59	14 BY MR. ROBERTS:	17:38:02
15	conduct any investigations regarding the existence	17:35:02	15 Q This is the exhibit that you may recall	17:38:28
16	of the alleged antitrust conspiracy?	17:35:07	16 you testified was a document that Circuit City	17:38:30
17	MR. LAHAD: Asked and answered.	17:35:10	17 prepared in advance of discussions with	17:38:33
18	MR. ROSS: That, you can answer.	17:35:13	18 representatives of the Thomson defendants, is that	17:38:35
19	MR. LAHAD: You can answer that.	17:35:14	19 correct?	17:38:38
20	THE WITNESS: I don't know.	17:35:14	20 A Yes, is in preparation for a meeting	17:38:40
21	BY MR. ROBERTS:	17:35:16	21 with Thomson personnel.	17:38:44
22	Q You don't know? Could you please turn	17:35:16	22 Q Looking again at the second page, the	17:38:47
23	to paragraph 214 in the complaint that is in front	17:35:19	23 second major bullet points, it states, "Thomson is	17:38:49
24	of you.	17:35:23	24 pricing products of similar quality and features	17:39:00
25	The first sentence in paragraph 214	17:35:39	25 to other competitors and prices that are below	17:39:05
Page 243		Page 245		
1	states, "Over the course of the relevant period,	17:35:41	1 those other competitors and reducing the profits	17:39:09
2	the price of CRTs remains stable and in some	17:35:44	2 of retailers," is it your understanding that this	17:39:14
3	instances went up in an unexplained manner despite	17:35:46	3 practice of Thomson was reducing the profits of	17:39:18
4	the national trends in those technology products	17:35:49	4 Circuit City?	17:39:22
5	to go down over time."	17:35:51	5 MR. LAHAD: Objection, misquotes and	17:39:25
6	Did I read that correctly, sir?	17:35:54	6 misstates the document.	17:39:27
7	A I read it the same as you read it.	17:35:56	7 MR. GRALEWSKI: Objection, form.	17:39:29
8	Q But during the relevant period, did	17:36:00	8 THE WITNESS: Now that the objections	17:39:32
9	Circuit City conduct investigations as to why	17:36:04	9 have been done, I forgot what you asked. I	17:39:38
10	prices of CRTs seemed to be remaining stable	17:36:07	10 am sorry.	17:39:41
11	instead of going down as somewhat expected?	17:36:11	11 MR. ROBERTS: That's okay. Maybe my	17:39:42
12	MR. ROSS: I instruct you not to answer.	17:36:14	12 question was unclear.	17:39:43
13	Beyond the scope.	17:36:15	13 BY MR. ROBERTS:	17:39:46
14	BY MR. ROBERTS:	17:36:34	14 Q Was it your understanding that Thomson's	17:39:46
15	Q During the relevant period, did Circuit	17:36:35	15 practice of pricing its products below those of	17:39:48
16	City monitor the prices of CRTs as opposed to CRT	17:36:42	16 other similar competitors were pricing was	17:39:53
17	products?	17:36:47	17 reducing the profitability of Circuit City?	17:39:54
18	MR. ROSS: I think that is beyond the	17:36:49	18 MR. LAHAD: Lacks foundation, assumes	17:40:02
19	scope, but I will let him answer.	17:36:50	19 facts.	17:40:03
20	THE WITNESS: I would not know how or	17:36:52	20 MR. GRALEWSKI: Objection, form.	17:40:05
21	why they would.	17:36:55	21 THE WITNESS: As I have testified	17:40:07
22	BY MR. ROBERTS:	17:36:56	22 earlier, anything that reduces the average	17:40:08
23	Q Is that answer no, sir?	17:36:57	23 retail of products reduces the profitability	17:40:11
24	A No. The answer is no.	17:37:03	24 of Circuit City Stores.	17:40:14
25	Q Why didn't Circuit City conduct such an	17:37:11	25 Could reduce it unless they were in an	17:40:18

62 (Pages 242 - 245)

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212-267-6868

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516-608-2400

	Page 246	Page 248
1	increase in sales that would offset the loss 17:40:26	1 corresponding increase in unit sales to 17:42:51
2	in profits from the average retail to 17:40:29	2 offset it. 17:42:53
3	client. 17:40:33	3 BY MR. ROBERTS: 17:42:54
4	BY MR. ROBERTS: 17:40:33	4 Q This bullet point discusses various 17:42:59
5	Q Looking again at bullet point 2 here, is 17:40:37	5 different sizes of GE televisions in comparison to 17:43:03
6	it your understanding that this is representing 17:40:40	6 other brands of similar size. 17:43:06
7	that Thomson was setting a comparatively low 17:40:43	7 Is it fair to say that Circuit City 17:43:09
8	suggestion manufacturer pricing for these 17:40:48	8 earned different profit margins on different 17:43:12
9	products? 17:40:50	9 brands of televisions of the same size? 17:43:16
10	MR. GRALEWSKI: Objection, form. 17:40:52	10 MR. LAHAD: Vague. 17:43:21
11	THE WITNESS: He says specifically that 17:40:56	11 THE WITNESS: I don't think the piece of 17:43:22
12	he doesn't understand that the GE product 17:40:58	12 paper has anything to do with that, but as I 17:43:24
13	position well below other (similarly featured 17:41:02	13 testified earlier, we would expect different 17:43:27
14	product.) Does that answer your question? 17:41:05	14 margins at different price points and so 17:43:30
15	BY MR. ROBERTS: 17:41:08	15 different sizes have different price points. 17:43:34
16	Q I guess I am saying that that is the 17:41:08	16 BY MR. ROBERTS: 17:43:37
17	manufacturer's suggested price? 17:41:11	17 Q I guess I am trying to get at the size 17:43:37
18	MR. LAHAD: It assumes facts. Calls for 17:41:14	18 issue, sir. Was margin correlated in a general 17:43:39
19	speculation. 17:41:17	19 way with the relative size of televisions that 17:43:44
20	THE WITNESS: (No response) 17:41:17	20 were sold by Circuit City? 17:43:48
21	BY MR. ROBERTS: 17:41:26	21 MR. LAHAD: Vague. 17:43:50
22	Q You can answer, sir. 17:41:27	22 THE WITNESS: Price point was more of a 17:43:52
23	A Again the question is – well, what is 17:41:29	23 factor than size, but it could have been a 17:43:55
24	the question? 17:41:34	24 factor, yes. 17:44:03
25	Q I guess I am trying to understand 17:41:36	25 BY MR. ROBERTS: 17:44:04
	Page 247	Page 249
1	exactly what your understanding is of what this 17:41:37	1 Q Did Circuit City earn different profit 17:44:05
2	document is representing about how Thomson is 17:41:41	2 margins on televisions that were relatively full 17:44:09
3	positioning the products, and I am asking you, it 17:41:43	3 featured and higher quality than it did on lower 17:44:14
4	says, "Thomson continues to build added value to 17:41:49	4 featured lower-quality televisions? 17:44:18
5	GE product and position it way below all of the 17:41:51	5 MR. LAHAD: Asked and answered. 17:44:21
6	brands similarly featured products," is it saying 17:41:54	6 THE WITNESS: The answer is yes. 17:44:21
7	that Thomson is setting a suggested manufacturer's 17:41:56	7 BY MR. ROBERTS: 17:44:23
8	retail price that is below what other 17:42:00	8 Q Was that consistent throughout the 17:44:24
9	manufacturer's are setting? 17:42:04	9 relevant period? 17:44:26
10	MR. LAHAD: Again, lacks foundation. 17:42:06	10 A Yes. 17:44:27
11	MR. GRALEWSKI: Objection, form. 17:42:08	11 MR. ROBERTS: Nothing further. Thank 17:44:30
12	MR. LAHAD: Assumes facts. The document 17:42:09	12 you, sir. 17:44:31
13	speaks for itself. 17:42:10	13 MR. ROSS: Bob, I think you wanted to 17:44:33
14	THE WITNESS: Yes. 17:42:12	14 ask a few. 17:44:34
15	BY MR. ROBERTS: 17:42:14	15 MR. GRALEWSKI: Yes, thank you. 17:44:36
16	Q How does the fact that Thomson is 17:42:14	16 EXAMINATION BY MR. GRALEWSKI: 17:44:36
17	setting such a price will reduce the profitability 17:42:20	17 Q Good afternoon, Mr. Deason. My name is 17:44:36
18	of Circuit City? 17:42:22	18 Bob Gralewski and I represent Consumers of CRT TVs 17:44:42
19	MR. GRALEWSKI: Objection, form. 17:42:28	19 and Monitors many of whom likely bought from 17:44:48
20	MR. LAHAD: Yes, vague. 17:42:29	20 Circuit City who are suing CRT manufacturers and I 17:44:53
21	THE WITNESS: Again, anything that 17:42:31	21 have a couple of questions for you regarding MSRP. 17:44:58
22	decreases the average retail, that Circuit 17:42:34	22 For CRT finished products during the 17:45:05
23	City collects on a category of goods reduces 17:42:38	23 relevant time period, was MSRP for a SKU ever set 17:45:11
24	or is more than likely to reduce the profits 17:42:44	24 lower than Circuit City's cost for that SKU? 17:45:16
25	of that product unless there is a 17:42:48	25 A I do not know of such an example and 17:45:26

63 (Pages 246 - 249)

VERITEXT REPORTING COMPANY

212-267-6868

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516-608-2400

	Page 250	Page 252
1	that would be a very odd occurrence. 17:45:29	1 would be discussed and reviewed at any time. 17:48:59
2	Q What is your understanding of how 17:45:35	2 MR. GRALEWSKI: Thank you, Mr. Deason. 17:49:04
3	generally speaking MSRP was set by vendors? 17:45:37	3 I have no further questions at this time. 17:49:04
4	A The manufacturer's suggested retail 17:45:43	4 MR. ROSS: Is there anybody else on the 17:49:09
5	price was generally set by the vendor as the price 17:45:45	5 phone? We have a little bit of clean up 17:49:11
6	that they believed was competitive in the 17:45:49	6 though. 17:49:17
7	marketplace. 17:45:58	7 MR. LAHAD: Right and I will just ask 17:49:17
8	Q Do you have an understanding that 17:45:59	8 from here. 17:49:19
9	anything else went into how particular MSRP was 17:46:00	9 EXAMINATION BY MR. LAHAD: 17:49:19
10	arrived at? 17:46:07	10 Q Mr. Deason, earlier you testified about 17:49:20
11	A I don't have knowledge of how the 17:46:08	11 trips that you and other Circuit City buyers took 17:49:24
12	vendors sold it. 17:46:10	12 abroad to visit CRT finished product vendors 17:49:25
13	Q Do you have an understanding that costs, 17:46:13	13 during the relevant time period, do you recall 17:49:27
14	a vendor cost, was a component of MSRP? 17:46:16	14 that? 17:49:31
15	A Again, the discussions that a buyer 17:46:24	15 A Yes. 17:49:31
16	would have with a vendor about a manufacturer's 17:46:33	16 Q Do you recall any of the specific CRT 17:49:32
17	suggested retail price would be about whether it 17:46:36	17 finished product vendors you visited during these 17:49:35
18	was a competitive price or not. We would not be 17:46:39	18 trips abroad? 17:49:38
19	having discussions about what it cost them to 17:46:44	19 A Yes. 17:49:39
20	build. 17:46:47	20 Q Did you visit Panasonic? 17:49:39
21	Q What would you expect to happen based on 17:46:48	21 MS. ARGUELLO: Object to form. 17:49:41
22	your experience to MSRP if vendor costs went down? 17:46:51	22 THE WITNESS: Yes. 17:49:42
23	MS. LIN: Objection, calls for 17:47:03	23 BY MR. LAHAD: 17:49:44
24	speculation. 17:47:04	24 Q Did you and any other Circuit City 17:49:44
25	THE WITNESS: Since I don't know when 17:47:04	25 buyers visit Hitachi? 17:49:44
	Page 251	Page 253
1	vendors' costs went down, I am not sure that 17:47:06	1 A Yes. 17:49:46
2	I have a reasonable expectation. 17:47:10	2 MR. GAWLEY: Object to form. 17:49:52
3	BY MR. GRALEWSKI: 17:47:19	3 BY MR. LAHAD: 17:49:52
4	Q I know that you have been testifying for 17:47:19	4 Q Did you and any other Circuit City 17:49:57
5	a long time today. Just a little bit ago you used 17:47:21	5 buyers visit Toshiba? 17:49:57
6	an example in an answer, I believe you talked 17:47:25	6 MR. BAVE: Objection, vague and 17:50:04
7	about MSRP decreasing by \$75 and your Circuit 17:47:29	7 ambiguous. 17:50:04
8	City's cost decreasing by \$50 in that example, do 17:47:35	8 THE WITNESS: I was not party to any 17:50:05
9	you remember that testimony? 17:47:39	9 Toshiba visits, so I cannot speak to that, 17:50:07
10	A Yes. 17:47:40	10 but I know that buyers went to all major 17:50:09
11	Q Why did you use that example? Do you 17:47:40	11 suppliers and would have it on their agenda 17:50:18
12	have an understanding that a decrease in MSRP is 17:47:49	12 to visit Toshiba. 17:50:23
13	typically related to a decreased in your costs? 17:47:54	13 BY MR. LAHAD: 17:50:24
14	A Yes. 17:48:02	14 Q Did you and any other buyers visit 17:50:26
15	Q For CRT finished products during the 17:48:11	15 Samsung? 17:50:27
16	relevant time period, how often would MSRP change 17:48:14	16 A Yes. 17:50:29
17	for a particular CRT finished product SKU? 17:48:19	17 Q What about LG? 17:50:30
18	A As I testified earlier the 17:48:26	18 MS. LIN: Object to form. 17:50:33
19	manufacturer's suggested retail price was 17:48:32	19 THE WITNESS: I was on a trip with 17:50:35
20	generally set for a year. 17:48:35	20 buyers who visited LG, but I did not. 17:50:37
21	It may change because it is not selling 17:48:38	21 BY MR. LAHAD: 17:50:40
22	or it may change because there is an introduction 17:48:44	22 Q Did you or any other buyers visit 17:50:41
23	of a new product. 17:48:47	23 Phillips? 17:50:43
24	The standard review was about every six 17:48:49	24 A Yes. 17:50:50
25	months, however any product that was not selling 17:48:56	25 Q And you testified earlier that during 17:50:52

64 (Pages 250 - 253)

VERITEXT REPORTING COMPANY

212-267-6868

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516-608-2400

Page 254	Page 256
1 these trips and visits the vendors would, if I 17:50:56	1 this is what we're now going to do. We are now 17:53:14
2 understood your testimony, present new or 17:50:58	2 going to put the button on the left hand side. 17:53:18
3 forthcoming products, is that accurate? 17:51:01	3 "It now looks like this, and oh, by the 17:53:20
4 A Yes. 17:51:02	4 way, the manufacturer's suggested retail price is 17:53:23
5 Q You also testified that during these 17:51:04	5 going to be this." 17:53:26
6 presentations, vendors, I believe you used the 17:51:05	6 That conversation could happen on a 17:53:29
7 term, "trial balloon," do you recall that? 17:51:09	7 return visit to a foreign country. It could 17:53:31
8 A Yes. 17:51:10	8 happen by the foreign representatives coming to 17:53:33
9 Q Can you give me a little bit more 17:51:11	9 Circuit City or coming to a sales office in the 17:53:40
10 explanation on what you meant by trial balloon? 17:51:12	10 U.S. and we meet them there. 17:53:44
11 A They would say, "We have this product 17:51:16	11 But you have to get that level of, "This 17:53:47
12 and we are going to sell this at \$999. Do you 17:51:19	12 is what we're going to offer and this is why the 17:53:50
13 think that would be competitive?" 17:51:23	13 change that we have made." 17:53:56
14 Q \$999, meaning, the MSRP? 17:51:25	14 At that point we may have more 17:53:58
15 A That is the manufacturer's suggested 17:51:27	15 information that says, "Sorry, but that is still 17:54:01
16 retail price and would that be a competitive 17:51:29	16 not competitive," and so we may be giving an 17:54:04
17 manufactured suggested retail price and we might 17:51:35	17 indication at that point to senior people from 17:54:10
18 give back information saying, "It is not 17:51:39	18 that vendor that it is still not right, and that 17:54:15
19 competitive today because I already own a product 17:51:44	19 they have got more work to do overall but it's 17:54:20
20 that has more features on it than that, that I 17:51:46	20 starting. That's the next step. 17:54:27
21 sell for \$799," or we might say, "We don't believe 17:51:48	21 At some point they are going to say, 17:54:32
22 that that is going to be competitive going 17:51:53	22 "This is our assortment and this is what we're 17:54:34
23 forward." 17:51:55	23 proposing that we sell it to you for." 17:54:38
24 Q When you say competitive, competitive 17:51:55	24 It's possible that the buyer would get 17:54:42
25 where? 17:51:57	25 ahead of that process, and say, "I would buy 17:54:46
Page 255	Page 257
1 A Competitive on our sales floor because 17:52:58	1 500,000 of these if you give me a cost of this." 17:54:53
2 we looked at and are contemplating buying other 17:52:00	2 You would have continuous negotiations 17:54:58
3 product that would make that product 17:52:07	3 from there involving all of those people down to 17:55:01
4 non-competitive. 17:52:09	4 the point of finally making an agreement. 17:55:04
5 Q The sales force in the U.S., is that 17:52:11	5 Q To be clear, on behalf of Circuit City, 17:55:07
6 right? 17:52:13	6 it would be the buyer located in Richmond, 17:55:10
7 A Yes. 17:52:13	7 Virginia? 17:55:12
8 Q You also testified if I understood your 17:52:16	8 A That is correct. 17:55:12
9 testimony that this was the start of what you said 17:52:18	9 Q Earlier there were some questions 17:55:16
10 was, "One long negotiation," to you recall that? 17:52:20	10 regarding the use of cost information from one 17:55:17
11 A Yes. 17:52:23	11 vendor with other vendors, do you recall that? 17:55:21
12 Q I want to fill in a little more of this 17:52:24	12 A Yes. 17:55:23
13 long negotiation. After you have this visit 17:52:26	13 Q Let me ask you this. If a CRT finished 17:55:25
14 abroad at these CRT finished product vendors 17:52:30	14 product vendor decreased its costs to Circuit City 17:55:29
15 sites, and you come home, who or what would -- 17:52:32	15 for a class, or a product, would Circuit City use 17:55:32
16 MR. LAHAD: Strike that. 17:52:39	16 that information that cost information with other 17:55:38
17 BY MR. LAHAD: 17:52:39	17 vendors at all? 17:55:41
18 Q What would be the next step? 17:52:39	18 A No. 17:55:44
19 A Since you had seen things very early and 17:52:43	19 Q Did Circuit City ever share specific 17:55:45
20 sometimes we see product six months before it is 17:52:47	20 costs information from one vendor with another 17:55:48
21 going to be introduced, or even longer, the next 17:52:52	21 vendor? 17:55:50
22 step would be, "What have they done?" based on the 17:52:59	22 A No. 17:55:51
23 feedback that you have given them, or that other 17:53:02	23 Q I want to point you to Exhibit 2845. 17:55:53
24 customers had given them, and so there would be an 17:53:06	24 It's the memo to the Sony file. I have a few 17:55:59
25 update of, "You guys saw this once before, but 17:53:10	25 questions specifically about the fourth bullet 17:56:15

65 (Pages 254 - 257)

VERITEXT REPORTING COMPANY

212-267-6868

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Page 258	Page 260
1 point that we talked about before. Do you need a 17:56:18 2 second to re-read that bullet? 17:56:22 3 A Yes. 17:56:24 4 Q Please do. 17:56:25 5 A I am familiar. 17:56:30 6 Q Does this fourth bullet state that 17:56:32 7 Thomson, Phillippe, and Zenith will raise their two 17:56:34 8 prices together after consulting with each other? 17:56:38 9 A No. 17:56:40 10 Q Is there any indication in this bullet 17:56:42 11 or in any of Exhibit 2845 that Mr. Palumbo 17:56:44 12 indicated that CRT makers were meeting to fix 17:56:49 13 prices? 17:56:52 14 A No. 17:56:52 15 Q Is there anything in this bullet point 17:56:53 16 or anywhere else in Exhibit 2845 that would lead 17:56:55 17 you to believe that CRT manufacturers were meeting 17:56:59 18 to conspire on fixing the prices of their 17:57:01 19 products? 17:57:04 20 A No. 17:57:04 21 Q In your mind is the information in 17:57:06 22 Exhibit 2845 specific enough for Circuit City to 17:57:09 23 initiate investigation into CRT price fixing? 17:57:14 24 MR. BAVE: Objection to form. 17:57:18 25 THE WITNESS: No. 17:57:21	1 2 UNITED STATES OF AMERICA) ss: 3 DISTRICT OF COLUMBIA) 4 5 I, T. S. HUBBARD, JR., a Notary Public 6 within and for the District of Columbia do hereby 7 certify that the witness whose deposition is 8 hereinbefore set forth was duly sworn and that the 9 within transcript is a true record of the testimony 10 given by such witness. 11 12 I further certify that I am not related 13 to any of the parties to this action by blood or 14 marriage and that I am in no way interested in the 15 outcome of this matter. 16 17 IN WITNESS WHEREOF, I have hereunto set 18 my hand this 5th day of May 2014. 19 20 21 22 23 24 T. S. HUBBARD, JR. Commission Identification 237435 25 Commission Expires April 30, 2018
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Page 259
MR. LAHAD: Nothing further for you. 17:57:22 Thank you. 17:57:23 THE VIDEOGRAPHER: Are we done? There being no further matters, the time is approximately 5:57 p.m. This deposition is concluded. (Whereupon, the deposition concluded at 5:57 and the witness is to read and sign with arrangements already on record with standing orders for transcripts.)	
17 18 19 Subscribed and sworn to before me 20 this day of , 2014. 21 22	
23 NOTARY PUBLIC 24	

66 (Pages 258 - 260)

VERITEXT REPORTING COMPANY

212-267-6868

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516-608-2400

[& - 2845]

Page 1

&	10166 4:16	1:06 73:9,11	21810 178:3
& 2:8 4:5,14 5:6,15 7:12,20 227:12	105 8:17	1:41 97:18,20	21813 183:19
	10:58 1:16 2:9 9:13	1:48 97:21,23	219 8:22
0	11 11:24	2	227 8:8
0021806 8:20 169:16	11/25 189:22 190:3	2 69:13 93:5 107:14	23 1:15 2:7 9:14
0148714 8:17 105:21	1155 4:6	124:19 130:5,7	237435 260:24
0389749 8:19 154:5	12 8:15 12:2,3,4	133:19 134:1	238 8:9
0397160 8:22 219:20	91:14 208:22	154:18 163:23	239 8:23
0534111 8:19 137:13	1201 5:7	188:3 230:16,16	24 29:24
0543314 8:18 128:14	122 8:17	246:5	240 239:24 240:1,4
0548555 8:21 198:9	126 8:18	2,000 90:5 156:18	240:6,11
0567286 8:16 74:8	128 8:18	2,800 156:21	247 210:6
0569329 8:18 127:1	1299 7:5	20 2:8 9:21 29:23	249 8:10
0572187 8:17 122:25	12:03 56:4	30:9,10 83:24	25 11:24 33:25 34:1
0604919 8:21 208:18	13 11:24 29:23 30:5	122:20 143:14,14	36:25 37:1 187:3
0606306 8:20 186:20	30:10 31:3 45:15	144:9 240:20	252 8:11
07 173:16	47:9 163:23 173:9	241:24	27 75:15
07-5944 1:4	137 8:19	200 4:15	27th 6:16
1	14 11:24	2000 94:16,19 95:2	2814 140:15
1 11:23 69:12	15 83:24 90:21	106:10	2831 11:16
1,000 102:6 118:24	154 8:19	20004 7:6,14	2834 8:15 12:19,23
1,999 210:13	169 8:20	2002 15:12 17:11	13:2 14:15,18 15:1
10 8:6 37:24 38:1 83:24 115:4 155:4 201:2,13	16th 6:7	48:11 94:22 95:2	2835 8:16 68:14,17
10,000 46:3 90:3	1700 7:22	2004 48:11 98:4	68:21 73:16,25
100 55:18,19 118:23 163:21 190:12 213:1,2,4 234:2,10	186 8:20	99:3 188:25	2836 8:16 74:5,8,11
100,000 90:4,5	19 11:24 29:23 30:6	2006 22:11	2837 8:17 105:18,21
1000 3:6	30:10 31:3 152:15	2007 22:19 165:10	106:2,12 108:17
1001 7:13	1917 1:5	187:4 208:22	2838 8:17 122:21,24
10022 6:8	198 8:21	240:13 241:7	124:19
10036 4:7	1980 155:10	242:14	2839 8:18 126:22,25
	1990s 86:7	2013 239:23	2840 8:18 128:10,13
	1992 15:3,17 18:21	2014 1:15 2:7 9:14	134:1 135:13,22
	1995 15:3,18 18:3,6	259:20 260:18	244:10,13
	18:10,17,21,21	2018 260:25	2841 8:19 137:10,13
	22:10,19 149:16	202 8:7	137:16
	165:9	202.624.2720 7:15	2842 8:19 154:2,6,9
	1996 15:8 16:7	202.639.1117 7:7	2843 8:20 169:12,15
	149:16 155:13	208 8:21	169:20
	181:20 199:3	21 11:24 30:2	2844 8:20 186:16,19
	1997 149:16 201:3	212.294.5304 4:17	186:23 189:3
	1998 15:9,12 16:7	212.371.6600 6:9	190:18
	17:10 19:5,9	212.819.2673 4:8	2845 8:21 198:5,8
	1:04 73:5,8	214 242:23,25	198:11 200:1,14
			257:23 258:11,16
			258:22

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

[2846 - ad]

Page 2

			8	access 221:17 accident 99:9 accommodate 139:4 account 69:2 114:6 116:19 123:19 accounted 96:23 97:6 accurate 19:25 21:15 163:21 254:3 ace 15:4 achieve 120:20 122:13 achieving 118:1 acquire 43:24 143:5 147:21 acquired 143:19 acronym 172:7,16 173:3,5 183:15 act 44:7 125:6 158:14 217:19 226:16 acted 19:20 acting 158:19 226:10 action 96:19 240:12 241:6,10 260:13 actions 1:10 138:15 active 35:8 actively 101:25 154:13 activities 93:9 215:20 216:16 228:15 activity 96:12 116:6 177:17 179:2,17,19 actual 17:6,7 96:22 97:2 121:13,17 212:21 ad 29:3 96:20 151:22,22 155:4 166:6,10 171:25 177:20 179:10,17 179:22 180:5 182:19 184:18,23 184:25 190:2
2846 8:21 208:14,17	4:30 197:6,9			
2847 8:22 219:16,20	4:37 202:5,8	8 115:5		
2848 8:22	4:38 202:8,10	800 187:15		
2849 8:23 239:4,7	5	80203 7:23		
299 144:19	5 201:2,13	825 6:7		
2:41 133:18	50 113:20 152:14	8th 2:8 9:21		
2:48 133:22	164:5 237:2 251:8	9		
3	500 196:15			
3 11:23 133:22	500,000 210:17	9 11:24		
197:4	257:1	90 51:23 149:23		
3,000 156:18,20	5100 3:7	207:1		
30 10:17,21 29:25	555 6:16	94104 6:17		
51:22,23 98:15	56 155:18	94105-2907 3:17		
118:23 122:18	560 3:15	95 145:10		
158:23 159:1	57 157:6,8	97 145:8		
161:20 200:2,4	5:10 227:4	98 145:9		
240:17 260:25	5:14 227:7	99 47:10,10 122:19		
303.607.3792 7:24	5:57 259:5,9	144:24 145:2		
30309 5:8	5th 260:18	99.9 148:7		
31 181:19 223:2	6	999 210:13 254:12		
312.222.9450 5:18		254:14		
315 75:3	6 10:17,21 11:23	a		
3200 7:21	158:23 159:1	a.m. 1:16 2:9 9:13		
349 144:18	161:20 164:7 200:2	ability 28:24 50:5		
35 29:25	200:4 240:17	54:13 71:24 121:4		
353 5:16	60 51:23 98:14	126:14 134:18		
399 79:9 110:22	600 54:7	153:12 237:25		
3:38 169:5,8	60654 5:17	able 29:2,15 55:18		
3:50 169:8,10	650 21:18	62:14,23 63:8,19		
3m 119:17,17 120:3	660 21:18	64:2,6,10 72:23		
120:4	68 8:16	85:3 112:18 118:3		
4	699 111:12	151:24 152:1 175:9		
	7	177:10 195:19		
4 109:9 197:8	7 11:24	205:18 210:21,21		
40 29:25 112:12	700 122:17	221:20 223:4 226:3		
137:2,6 156:15	700,000 210:17	236:17,24		
400 21:17 47:10	713.651.9366 3:9	abolished 95:1		
120:6 196:14	74 8:16	abroad 88:20 112:6		
404-253-8488 5:10	75 237:3 251:7	113:1,3 115:13		
404.881.7000 5:9	77002 3:8	252:12,18 255:14		
415.439.1400 6:18	799 111:11 254:21	absolutely 107:8		
415.512.4034 3:18		accept 52:25		
449 79:10		acceptance 131:12		
4:28 197:3,6				

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

[ad - appropriateness]

Page 3

209:17 212:16	advised 210:1	228:4,7,23 229:17	241:17 242:11,18
216:1,12 229:21	affect 47:13 145:15	230:6 231:7 232:7	242:19 243:12,19
230:4 231:24	145:18,21	232:20 233:21,22	243:23,24 244:5
add 49:4 179:24	afternoon 56:6	234:9 260:2	246:14,22 249:6
added 247:4	202:12,15 249:17	america's 230:25	251:6
addition 51:7,14	agenda 253:11	231:16 233:13	answered 100:17
214:24	aggressive 185:23	american 203:14	143:22 146:10
additional 34:24	185:25	240:6,9	163:13 211:22
53:1 54:2 96:8	ago 251:5	americas 4:6	217:8 234:17,22
117:4 186:14	agree 131:7 225:4	amount 31:4 42:14	242:11,17 244:2
210:17 217:10	agreed 53:25 69:14	46:2,16 83:4,8,11	249:5
addressing 209:5	70:2 83:19 86:9	83:13 89:7,10,18	answering 13:19
adequate 42:3 137:1	agreement 53:16	90:7,11,22 99:10	218:20
adjective 74:4	82:4,7 99:14,20	115:6 131:13 143:7	answers 211:12
adjustment 71:14	100:1 112:2 201:15	143:18 144:2,4	antenna 45:16
adopted 169:23	257:4	149:3 185:9 213:23	anticipate 155:20
ads 15:25 93:18	agreements 67:9	218:21 230:9	antitrust 1:8 242:16
104:25 138:15	82:1 86:8 87:18	amounts 113:15	anybody 165:16
139:14 166:5	99:7,7 230:14	117:4	180:22 213:21
177:16,22,25	agrees 81:7	analysis 119:15	214:2 252:4
179:13 190:6,9	ahead 12:21 97:16	andrew 106:5,12	anymore 75:14
advance 216:18	133:15 241:4	137:18	101:15 132:21
244:17	256:25	andy 20:18 74:14,22	233:17
advantageous	aide 8:15	74:23 75:20	anyone's 206:9
132:11,18 133:14	air 114:21 115:6	announced 44:17	apart 43:3 49:23
advertise 84:4,12	aligned 182:20	annual 34:18,19	193:15,16
140:9 185:23 186:2	alleged 197:12,15	35:11 77:20 78:6	apologize 40:18
186:9 204:12	238:20 241:21,25	80:24 206:8	appear 69:14
advertised 52:19	242:16	annually 78:21	124:22 161:4
83:18 117:19	allegedly 200:16	anomaly 212:24	177:24 200:14
139:17 153:1	allow 216:23 217:2	anshakov 20:21	appearances 9:6,7
154:23,25 155:2	allowances 227:24	answer 11:5 18:13	appeared 2:5
158:11 166:9	allowed 149:21	32:19 33:6 36:23	appearing 3:11,20
182:21 183:20,24	150:18,21,24 151:4	37:9 40:20 46:20	4:10,19 5:3,12,20
183:25 184:12	151:8,17	53:4 58:16 63:23	6:3,11,20 7:2,9,17
185:2,3,15 186:3	allows 104:24	77:13 81:18 87:15	7:25 13:21
225:8,9	alston 5:6	91:4 103:18 107:9	appears 70:2,5
advertisers 54:6	alston.com 5:11	108:11 112:21	137:16,17 181:7
advertising 52:21	alternative 193:3	118:5 120:24 125:5	182:4 209:8
64:23 84:16 124:21	amazon 164:23	132:11 141:7 142:9	applied 232:23
124:25 159:24	165:7,10	142:23 146:14	233:1
211:10 230:1,2	ambiguous 253:7	161:9,21 170:4	apply 9:8
advice 177:20	amend 122:7	194:24 195:13	appreciate 239:2
203:15	america 125:12	232:1 234:18	appropriateness
	126:1,7 227:20	239:25 240:14	204:21

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

[approve - bave]

Page 4

approve 26:17	aspect 105:2 207:12	average 118:17,18	63:7,18 78:6,21
approximately 9:13	assignment 170:25	127:21,22,24	83:5,20 96:11 113:2
15:14 17:11 31:21	assignments 178:12	130:19 133:8,9,10	118:1,12 142:23
56:4 73:5,11 94:19	assistant 17:12	164:2 200:20	143:9 144:8 152:17
97:22 98:4 133:18	209:10 220:8	245:22 246:2	152:20 179:25
133:22 169:5,10	associate 220:21	247:22	187:3 199:25 210:3
197:3,8 202:10	associates 29:11	avoid 128:3,8	210:11,20 212:2,2
222:21 227:4,7	95:3	aware 41:1,16 64:5	224:13 228:19
259:5	association 221:9	84:14 99:24 103:24	229:4,5 231:19
april 1:15 2:7 9:14	assortment 33:19	135:12 136:4	234:24 250:21
260:25	34:2,12 35:1 36:13	138:14 142:4,6,16	255:22
area 28:15 171:24	37:2 44:16 46:4	142:25 156:6	basic 59:5 66:6
argue 165:25	81:22,23 256:22	161:16 185:14	147:14
arguello 4:13 227:9	assortments 164:17	216:8 228:12	basically 34:9 45:6
227:11,12,15	assume 60:14 75:17		46:1 80:19 92:17
228:21 229:15	127:12	b	107:23 125:20
231:5,14 233:2,25	assumes 138:1	b 8:2 10:17,21 84:8	128:25 129:25
234:20 235:1,5,20	169:24 199:21	158:23 159:1	130:9 138:3 172:10
236:15,23 238:11	245:18 246:18	161:20 181:4	174:12 175:20
252:21	247:12	182:13,19,23 183:1	177:2 222:20
arguing 108:13,24	assuming 70:4	183:3,10,13 200:2,4	basis 34:18,20 35:9
arrange 114:23	atlanta 5:8 15:22	240:17	35:11 77:20 78:6
arrangements	attention 74:25	back 40:20 41:21	80:24 86:18 116:17
259:10	124:18 127:4 130:4	48:18 56:9 69:23	157:12,18 168:6
arrived 250:10	155:17 176:23	73:12 86:21 97:23	172:22 179:3 184:4
ascertainable 217:6	212:3	104:17,18 111:9,22	229:1
218:3	attorney 204:24	126:24 133:23	bates 8:16,16,17,17
aside 73:25 128:13	attorneys 13:10	142:8 151:23 155:8	8:18,18,19,19,20,20
144:1 186:19 211:1	attractive 108:18	155:25 166:21	8:21,21,22 68:18
asked 63:24 76:18	attributable 61:25	167:17,25 169:10	74:8 105:21 122:24
98:13 146:10	auction 45:1,4,5	176:1 197:9 202:10	127:1 128:14
165:16 211:22	46:6,10 48:1,4,12	207:3 208:5,6,10,12	137:13 154:5
217:8 220:25	48:21 49:7,23	220:9,25 221:22	155:18 157:5
221:21 234:17,22	auctions 45:9	227:7 228:8 254:18	169:16 173:16
239:1 242:17 244:2	audio 24:13	backed 49:3 215:7	183:19 186:20
245:9 249:5	auguello 8:8	backing 107:15	198:8 208:17
asking 49:15,17	authority 26:17	bad 127:21 185:5	219:20 239:14,18
54:24 83:14 85:10	27:12,18 150:15	bag 152:14	bave 4:4 8:7 202:12
86:16 89:17 92:11	automatically	baker 7:4,20	202:13,17 205:20
103:20 123:3	187:21	bakerbotts.com 7:8	207:24 208:16,20
158:22 161:20	availability 105:6	balloon 254:7,10	210:25 211:2,14
192:7 206:4 213:13	available 33:15 54:8	balloons 110:18	212:7 217:11
220:21 240:8,19	147:24 224:4	based 15:22 28:3,7	218:10 219:5,18,23
247:3	avenue 4:6,15 6:7	31:13 33:22 35:22	220:1 221:5 222:7
	7:5,13	43:12 55:5,6 58:16	224:7,24 225:3

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

[bave - buy]

Page 5

227:1 253:6 258:24	241:4,13,17 242:6	101:6 102:10	build 247:4 250:20
beat 185:20	242:12 243:13,18	112:11 131:19,20	building 107:24
beginning 44:24	bgralewski 6:10	164:5 173:5,6,10	built 15:11 81:15,20
73:12 122:24 127:1	bi 77:20 78:21	202:22 214:13,14	bulk 149:18
128:14 133:21	bid 45:22	branded 46:11	bullet 130:5,7 134:1
149:17 152:23	bidder 46:7	80:23 203:4	134:2 135:21
154:5 155:8 157:7	bidding 46:1	brands 26:6 38:3,5	198:25 199:2
183:21 197:7	big 110:25 156:10	38:15 59:7,10,13,14	200:13 222:24
begins 130:5	157:2,3 165:10	100:10,12,13	244:23 246:5 248:4
behalf 103:22 257:5	188:16 206:1	101:17,25 102:14	257:25 258:2,6,10
believe 19:24 20:20	bigger 31:14	103:17 130:17	258:15
23:8 29:24 30:9	biggest 46:15,22	247:6 248:6,9	bunch 86:25 138:12
33:12 39:2 40:10	84:15 164:21	brandsmart 203:18	burgess 68:25 69:7
41:19 47:16 52:8	biggies 93:19 116:10	203:19 213:1,2,3	business 31:15
73:22 106:17	164:24	222:22	33:21,21 35:23,24
120:16 124:2	bird 5:6	brandsmarts 203:20	36:3,5,17,19 40:4
143:22 155:14	bit 96:4,17 153:18	brandy 9:7	56:20 73:21 89:25
170:18 175:13	189:18 224:20	bread 215:15	90:1,6 103:6,10
183:13 187:2	251:5 252:5 254:9	break 11:9,12 55:24	107:10,12 116:22
188:25 197:15	black 181:9 185:17	56:2 73:2,7 96:2	118:4 119:22
202:21 222:2 244:7	186:1 190:4 216:18	97:17,19 133:16	120:17 145:4 153:8
251:6 254:6,21	blank 188:4	169:1,2,3,7 196:25	177:18 205:5 214:2
258:17	blind 45:25	197:5 202:7 224:23	216:6,22 221:17
believed 250:6	block 5:15	231:19	224:14 226:25
believes 201:2	blood 260:13	breaker 98:17	230:18 232:4
benchmark 73:17	bma 189:1	brew 7:11	233:22 234:3,11
73:23 74:2 144:22	bob 249:13,18	brief 10:24	busy 168:13 226:13
145:1	boilerplate 99:6	brilefly 128:17 202:3	butt 35:14
beneficial 103:4	bonus 83:23	bring 13:6 129:19	button 256:2
beran 2:8	book 109:14 172:19	134:23 239:1	buy 26:7 38:1,7,10
best 117:24 159:17	172:20,21 183:17	broad 189:16	38:19 46:3 50:15
164:22 165:5	bottom 69:12	broke 24:17	53:6 64:11,19,20
166:12 175:5 176:8	178:20	broken 24:5 119:18	75:4,8,17 90:4
176:17 189:21	botts 7:4	119:19	91:17,18 98:14
190:2,6,9,17,23	bought 20:12,13	brought 12:16,22	102:4 112:7,16,17
215:15 220:19	30:8 34:25 55:11	48:6 189:18 216:14	113:18,18 134:25
221:9,11,17 222:8	56:18,22 57:4 60:4	btl 120:16	135:4,5 149:9,17,25
223:1,5	74:20 78:1 86:25	budget 34:21 118:24	150:10 157:20
better 89:8 112:19	89:7 90:3 91:14	119:18,20 121:1,4,5	164:23 165:5
118:9 126:14 132:3	92:16 155:1 249:19	budgeting 164:12	166:12 175:5,24,25
134:19 135:5	box 105:17 171:20	budgets 97:15 118:3	189:21 190:17,23
161:12 194:7 217:3	176:1,23 178:20	118:11 119:1,5,9,25	195:24 196:10
beyond 158:25	brand 38:4,5,8,12	119:25 120:2,2,10	215:6 220:19 221:9
161:22 205:24	38:18,21 45:12,13	120:20	221:11 222:8 223:1
235:11 240:1,15	46:13 100:15,16,23		223:5 224:1,5

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

[buy - change]

Page 6

225:25 226:5 229:3 233:17 256:25 buy's 190:2,6,9 221:17 buyer 15:13 16:19 16:22 17:1,3,12 19:4,6,11,18,21 20:14 26:7 27:11,12 27:20,24 28:1 30:25 31:2,3 32:8 60:3 61:10 63:7,18 69:5 74:17 84:3,10 91:17 93:1 95:20 99:23 106:5,6,9 112:16 123:13 129:24,25 137:18,19 147:14 149:25 157:24 160:21 166:7,15 175:1 204:25 209:2 209:13 211:25 212:1 220:7,8,9 229:6 250:15 256:24 257:6 buyer's 16:4 26:18 buyers 19:8,13 20:7 20:10,17 26:8,12,21 26:24 27:2,18 28:13 31:7 33:4 35:19 40:15 43:2 65:24 92:14 96:10 102:20 103:19 109:4,7 120:18 121:8 122:3 147:11 148:19,21 149:17 150:4 152:9 187:10 206:12,17 209:9,10 212:22 230:17 252:11,25 253:5,10,14,20,22 buying 16:6,20 17:16 18:17 34:24 37:12,13 40:2,4 48:9 65:14 66:8 96:20 98:19 116:23 116:25 134:11 141:10 192:3	194:15 195:15 229:7 255:2 buys 31:2,3 c c 3:2 4:2 5:2 6:2 7:1 8:2 9:1 ca 3:17 6:17 caglin 68:25 123:10 123:13 137:18,22 cagwin 20:19 69:4,5 calculated 92:23 calendar 178:6 180:1,2,3 214:7 california 1:2 6:16 21:21 call 15:9 24:4 129:4 163:17 168:1 217:14 218:19 221:14 225:24 226:9 called 2:6 14:2 16:5 23:7 24:12 25:7 45:5 115:1 119:16 187:2 caller 226:19 calling 134:4 calls 69:17 73:18 75:10,25 108:21 115:19 125:19 127:10,17 138:20 182:1 199:6,13 200:17 201:8,17 221:3,24 226:20 246:18 250:23 camcorder 104:7 129:8,9 camcorders 15:13 16:13 camera 152:14 canada 23:5,12,17 cap 212:19 capacity 15:5 31:1 43:6 123:18,23	capturing 212:20 card 98:5 119:18 164:15 225:22 care 136:14,14 cared 60:21 98:5 careful 153:15 carried 37:23 90:23 100:18,23 152:14 carry 34:1 40:1 57:25 90:18 99:22 104:1 132:14 140:10 172:24 186:12 carrying 90:25 132:17 case 1:4 4:5 9:23 10:15,18 12:12 13:19 16:11 24:20 39:18 40:10 79:25 99:8 101:9 137:5 142:2 144:16 153:24 197:19 214:19 220:17 238:22 cases 10:14 32:7,7 36:2,3,7 42:17 46:1 46:5,5 55:1 63:24 64:20 88:25 95:19 102:5,5 114:7 168:22 186:14 233:8 236:24 cash 228:8,9 cast 113:19 catches 167:11 categories 16:12 35:7,9 152:10,13 category 15:7,8 16:8 16:25 19:3,10 25:10 47:15 57:16,21 58:25 59:2 93:11 147:12 152:4,12 153:22 214:10 247:23 cathode 1:7	cause 108:25 146:25 caution 20:11 cautious 84:23 cbm 173:4,6,14,15 cc 8:16,17,17,18,18 8:19,19,20,20,21,21 8:22 74:8 105:21 122:24 125:10,10 125:14 127:1 128:14 137:13 154:5 169:16 186:20 189:2 198:8 208:18 219:20 cc'd 189:8 cc0572597 8:16 68:18 cea 163:7,17 ceased 57:25 cecile 106:8,14 cent 145:2,8,9,10 center 7:21 211:5 cents 144:24 ceo 125:10 certain 33:10 59:1,7 95:22 98:11 112:9 118:1 151:19 153:4 153:5 161:16 195:1 207:17 208:2 213:14 214:5 216:17 228:9 certainly 49:13 93:25 98:16 172:3 233:16 certify 260:7,12 ces 93:3,4,6,7,11 cesar 212:15 cetera 33:10 34:21 40:17 116:18,23 153:2 chain 69:11 149:20 champion 48:12 chance 208:19 change 16:24 27:22 27:25 28:2,4,6,11 30:12 35:1 38:15
---	--	--	---

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

[change - circuit]

Page 7

59:16 73:3 77:4,9 77:16,19 78:4 79:5 79:6 101:4 111:19 112:23 118:18 133:16 141:13 143:9 144:5 145:25 146:17,19 147:8,19 147:21 148:1 150:15,21,25 151:4 151:9,17 152:5 153:12 170:7 184:23 197:1 204:4 204:9 210:5 230:25 231:16 234:15 236:10,11 237:24 238:4,8 251:16,21 251:22 256:13 changed 16:12 31:12,22 42:1 47:23 48:9 59:19 79:1 86:6,10 94:13 141:16 150:3 184:25 204:2 234:15 changes 76:9,13 148:4 151:2 152:17 155:14 170:12 179:23,25 237:11 237:13 changing 30:16 78:10,22 91:13 174:5 176:6 179:20 182:24 charge 32:4 charged 143:7 144:22 148:5,12,13 148:25 165:14,24 176:9,18 177:13 196:4 charging 216:24 charles 7:3 charles.malaise 7:8 chart 177:22 charts 19:24	check 214:4 215:19 220:21,25 221:22 223:21,24 chicago 5:17 china 111:6 choose 15:23,25 28:1,2 45:22 71:4 85:3 141:8 159:23 185:11 206:24 chooses 26:7 choosing 55:21 135:2 chose 65:14 chosen 174:1 christmas 29:6 150:25 151:1,3,15 168:10 185:18 circuit 3:11 10:16 12:18 13:4,13,22 14:6,9,14 17:21,22 17:25 18:1,5 19:10 21:12 22:2 23:1,2,7 23:11,19,25 26:4,8 26:16 27:5 29:16,19 30:12,22 31:21 32:12,16,25 33:4 34:16 35:4,19 36:7 36:9 37:1,5,7 38:24 39:5,8,16 40:7,12 41:17,23,25 42:7,8 42:21 43:2,11,14,24 44:2,13,22 45:1 46:6,21 47:12,13 48:1,22 49:8,24 50:5,18 51:2 52:1,3 52:22,25 53:12,24 54:19,20 55:8,14,15 56:15,22 57:7,17,25 58:6,13,17 59:22,23 60:10,11,13,17,22 61:1,20,24 62:3,14 62:23 63:2 64:5,12 64:22 65:5,8,10,12 65:17 66:2,17 67:2 67:3,20 68:4,8 69:5	69:16 70:12,15,25 71:6,8,17 72:11,12 72:13,14,22 74:1,16 75:9 76:14 77:3,8 77:19 78:8,19,22 79:1,17,23 80:3,12 81:10,14,16,20,24 82:3 83:5 84:19,20 85:15 87:7,8,11,18 88:2,4,7,9,12,16,19 88:22 89:2,12,18 90:8,11,13 91:5,20 92:1,8 93:21 94:7 94:19 95:1,2 96:7 96:22 97:5,7,25 98:10 99:5,14,19,25 100:5,9,24 101:16 101:19,23,24 102:1 102:8,15,18 103:6 103:13,22,24 104:6 104:15 105:7,7,23 106:21 107:25 108:5,19 109:25 110:4 112:7,25 114:5,15 115:9,12 115:14 116:20 117:4,12,15,25 118:10,25 119:10 120:18,19,20 121:16,17,21,24 122:3,6,11,12 123:13,21,24 124:1 124:3,4,11,24 125:15,24 126:4,6 127:15,24 128:3 129:2 130:21 132:5 132:12,16,25 133:4 133:6 134:17 135:8 135:13 136:4,22 139:5,14 140:15,25 141:1,4,13 143:1,4 143:6,17,19 144:3,4 144:21 145:13,16 145:24 146:7,17,25 148:6,12,24 149:9	150:3,7,14 152:3 153:11,22 154:19 155:10 156:11 158:14 159:9,15,20 160:1,18 161:14,24 162:9,25 163:15 164:8,18 165:2,12 165:14,22,23 167:3 168:17 169:23 170:3 171:3,7 174:4 174:18,21,24 175:4 175:14 176:3,8,17 177:7 178:25 180:3 180:11,22 182:14 184:1,11 185:2,14 186:2 189:8,13,17 190:5,8,18,21 191:2 191:4,6,9,15,20 192:2,9,22 193:7,21 194:11,20 195:8 196:2,4 197:11,14 198:1 199:17,24 200:10 201:6,24 202:19,23 203:3,7 203:21,24 204:16 205:6,21 206:21 207:7,19 208:2 209:7 210:21 211:4 211:17,20 213:6,9 217:5,18,23 219:7 219:10 221:16 222:11,20 224:8 225:4 226:7,18,22 227:17 229:17 230:5 232:6,18,22 233:3,12,19 234:1,8 234:13,14,15 235:21 237:12 238:19 239:17,22 240:5,23 241:1,10 241:19 242:9,14 243:9,15,25 244:16 245:4,17,24 247:18 247:22 248:7,20
--	--	--	---

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

[circuit - colorado]

Page 8

249:1,20,24 251:7	89:18 90:8,11 91:5	196:4 197:11,14	145:16 148:13,24
252:11,24 253:4	91:20 92:1,8 93:21	198:1 199:17,24	154:20 164:18
256:9 257:5,14,15	94:19 95:1,2 96:7	200:10 201:24	165:15,24 174:21
257:19 258:22	97:25 98:10 99:5,14	202:19,23 203:3,7	180:3 184:1,12
circumstance	99:19 100:6,9,24	203:21,24 205:6,21	185:2 189:8 191:9
235:25	101:16,19,23,24	207:8,19 208:2	196:2 201:7 204:17
circumstances 64:4	102:1,8,15 103:6,13	209:7 210:21	206:21 211:5
131:11 234:21	103:22,24 104:6	211:17,21 213:6,9	232:18 234:13
236:3,16	105:7,24 106:22	214:1,17 215:4	240:5 249:24 251:8
cities 172:2,2	107:25 109:25	217:5,18,23 219:8	claims 197:12 240:5
city 3:11 10:16	112:7 114:5 115:9	219:10 221:16	240:12 241:11
12:18 13:4,13,22	117:4,12,15,25	222:11,20 224:8	clarify 93:10 144:1
14:6,10,15 17:21,22	118:10 120:20	225:4 226:7,22	146:18
18:1,1,5 19:10	121:21,25 122:6,11	227:17 229:17	clark 5:16
21:12 22:3 23:1,2,8	122:13 123:13,21	230:5 232:6,22	class 32:9 173:5,6,8
23:11,19,25 26:4,16	123:24 124:1,3,4,11	233:3,12,19 234:1,8	173:10 214:11
27:5 29:16,19 30:12	124:24 125:15,24	234:14,15 235:22	257:15
30:22 31:22 32:12	126:6 127:15 129:2	237:12 238:19	classes 32:6,10
32:16,25 34:16 36:7	130:21 132:5,12,16	239:17,22 240:23	clean 252:5
36:9 37:1,5,7 38:24	133:4,6 134:17	241:1,10,19 242:9	cleanliness 49:20
39:5,8,16 40:7,12	135:8,13 136:4,22	242:14 243:9,16,25	clear 11:2 91:4
41:23,25 42:7,8	139:14 140:15,25	244:16 245:4,17,24	141:6 231:2 257:5
43:11,14,24 44:2,13	141:1,5,13 143:6,17	247:18,23 248:7,20	clearly 165:6 181:12
44:23 45:1 46:21	144:3,4,21 145:13	249:1,20 252:11,24	clerk 221:21
47:14 48:1,22 49:8	145:24 146:7,17,25	253:4 256:9 257:5	client 246:3
49:24 50:18 51:2	148:6 149:9 150:3,7	257:14,15,19	close 193:20 215:5
52:1,3,22,25 53:12	150:14 152:3	258:22	closed 23:8
53:24 54:19 55:8,14	153:11,23 155:10	city's 26:8 33:4 35:4	closely 16:18 167:6
55:15 56:15,22 57:7	156:11 158:14	35:19 41:17 42:21	closer 38:10
57:17,25 58:6,13,17	159:9,15,20 160:1	43:2 46:6 47:12	clubs 203:22
59:22,23 60:10,11	160:18 161:14,24	50:5 54:20 60:13	clue 185:22
60:17,22 61:1,20,24	162:9,25 163:15	65:8,13 70:15 75:9	clyde 123:15
62:3,14,23 63:2	164:8 165:3,12,22	77:3,8 78:8,19	emb 173:3,13
64:5,12,22 65:5,10	167:3 168:17	79:23 80:4 87:9,11	collaborate 20:23
65:17 66:2,17 67:2	169:23 170:3 171:3	88:22 90:13 94:7	21:3
67:3,20 68:4,8 69:6	171:7 174:4,18,24	96:22 97:5,7 100:1	colleague 238:24
69:16 70:12,25 71:6	175:4,14 176:3,8,17	102:18 104:15	collect 204:9 217:5
71:9,17 72:11,12,13	177:7 178:25	105:7 108:5,19	collected 206:21
72:14,23 74:1,16	180:11,22 182:14	110:4 112:25	211:4,16 212:8
76:14 77:19 78:23	185:14 186:2	114:15 115:13,14	collecting 209:14
79:1,17 80:12 81:10	189:13,17 190:5,8	116:20 119:1,10	collection 207:18
81:14,16,20,24 82:4	190:19,21 191:2,4,6	120:18,19 121:16	collective 91:6
83:5 84:19,20 85:15	191:15,20 192:2,9	121:17 122:3 126:5	collects 247:23
87:7,19 88:2,4,7,9	192:22 193:7,21	127:24 132:25	colorado 7:23
88:12,16,19 89:2,12	194:11,20 195:8	139:5 143:1,5,19	

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

[columbia - conducted]

Page 9

columbia 260:3,6	communicated	162:16,18 166:3	173:22,22 174:3,5
column 172:7	119:14 147:25	176:7,9,18,21	175:14 176:7,10,19
178:19	237:16	177:11 179:6	177:4,9,13 179:13
combat 156:24	communicating	184:22 185:10	182:10 186:4 191:4
combination 15:10	206:17	186:11,13 190:25	191:9,16 192:23
16:14 17:8 47:24	communication	191:1 192:4,11,17	194:21 195:2 203:8
combine 33:11	44:18	203:25 204:8	203:13,22 204:18
combined 33:15	communications	205:19 207:11,18	204:22 205:22
combo 15:16 24:24	197:16	207:25 209:19	206:13 207:10
30:8 58:11,12,14	companies 40:16,23	210:2,4,12,20	211:3,10 215:17
95:24	40:24 41:20 114:15	211:16,19 213:5,7	216:24 217:13
combos 82:21	115:14 126:7 163:1	213:17 214:16	223:20 244:25
come 17:12 34:9	163:6,15 164:10	215:1 219:11 220:3	245:1,16
37:2 64:13 83:18	203:10	220:6 223:8 224:9	compilation 209:25
113:24 114:1,3,4,6	company 13:17,25	229:10,20 230:10	complaining 136:18
116:18,20 117:3,12	14:2 15:21 41:9	230:21 234:25	complaint 8:23
187:21 188:2	42:5,10,18,19 55:9	235:25 236:3 250:6	238:22 239:16,17
203:12 226:13	55:11 61:4 66:10	250:18 254:13,16	239:22 241:3
255:15	102:25 103:1,1	254:19,22,24,24	242:23
comes 48:18	111:1 113:11,24	255:1,4 256:16	complaints 241:6,9
coming 216:3 256:8	114:3,4 128:24	competitively	complete 46:20
256:9	164:3 177:25	173:21 176:4	completely 78:16
commenced 73:8	206:14 212:9	competitor 79:9	component 213:15
97:20 169:7 197:5	comparably 196:22	152:6,17 156:3	250:14
202:7	comparatively	158:5,7,16 167:5	compound 228:11
commencing 2:9	246:7	174:21 176:6	compromise 210:16
comment 201:13	compare 89:24	177:22,25 193:2	computer 15:6,19
commerce 39:14,16	215:4	205:7,16 206:20	45:21 58:18 153:16
39:20	comparison 248:5	208:1 209:14	188:13
commercial 210:7	compete 100:22	214:15 216:3 225:8	computers 25:9,10
commission 94:5,13	151:19,19 193:6,9	225:14,24 226:9,17	58:17 153:17
94:13,17,18,24	205:17	229:14	concentrated 25:21
101:12,14 175:5,7	competing 131:14	competitor's 158:12	26:8
260:24,25	214:18	158:20 167:4	concentrating
commissions 16:2	competition 102:3	179:20 180:2,4,5	106:11
94:8,23 95:2	206:15 207:14,20	191:21 209:17	concern 71:20,22
committed 112:19	208:10 219:1	213:11 216:1,12	concerned 107:20
common 26:25 86:3	223:16	218:3 223:9 225:5	concerns 106:24
220:11 221:11	competitive 28:20	226:8	137:22
231:22	70:8,15,23 71:4,11	competitors 28:3,7	concluded 112:5
commonwealth 2:12	87:25 118:5 133:6	28:14 152:2 153:13	259:6,8
communicate	134:8 136:16 138:6	154:23,25 159:7	conduct 242:15
166:20 167:24	138:24 144:8,12	164:18,21,25 165:2	243:9,25
178:5 230:20	148:10 150:11	165:15,24 166:9,19	conducted 2:7 43:11
	153:9 156:1,2 159:4	166:24 168:18	222:9

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

[conference - counsel]

Page 10

conference 115:20	165:14 191:17,19	cope 161:22	141:21 142:24
confidential 191:17	191:22 192:10	copy 128:25	143:14,19 144:3,6
191:22	196:3,4 249:18	corporate 15:7 16:8	144:10,16,20
confirmation	contact 36:20 43:3	16:25 19:3,3 111:23	147:19,21 152:15
225:18	contained 58:18	120:7 180:13,21,23	159:13 160:19,20
confused 236:13	60:18,23 222:9	181:1 189:20	160:23 161:5,5,14
conjunction 28:13	containing 14:23	190:14 203:24	161:17,25 162:7,8
connection 12:6	contemplating	205:25 206:5,8,10	162:11,12 165:17
consensus 31:5	255:2	211:20 220:8	165:18 173:1
consequence 141:1	context 36:10 39:20	corporation 74:24	191:11 193:22
consequences	43:23 71:6 76:4,7	correct 11:25 17:2	194:11 205:18
138:17 139:3	102:16 109:22	42:11 44:1 51:3,4	231:16 232:9 234:5
140:16,20,25	121:9 125:14	98:4 100:25 122:15	234:9 235:3,6 236:9
consider 88:23	131:25 179:19	137:8 141:23 143:3	237:3 249:24
130:21 191:15,20	194:8 195:8 196:20	172:15 177:20	250:14,19 251:8
192:2,9,22 194:20	contexts 136:6	187:7 201:7 202:20	257:1,10,16
considered 46:22	continually 187:11	203:10,11 207:20	costco 203:22
61:20 93:1 98:20	continue 80:25 95:3	207:21 211:18	costing 86:12
103:8 127:15 165:3	111:25	212:14 216:4 217:1	costs 27:3 34:4
consistent 80:21	continued 18:7	217:4 222:11 225:6	44:14,21 49:15,18
103:8 157:13	continues 130:6	235:25 237:14	49:25,25 51:1,8,14
231:10 249:8	247:4	244:19 257:8	63:12,20 65:13,19
consistently 82:19	continuous 257:2	correctly 19:9 21:11	67:4,14 68:5,9
90:8	continuum 58:25	35:5 160:5 243:6	69:15 70:3 72:7,10
console 32:2,4	contractor 13:18,23	correlated 248:18	77:9 78:2,5,19,22
consolidated 19:10	control 151:24	corresponding	79:17 80:4,11,11
conspiracy 197:16	152:1 232:22	248:1	87:12 91:21,22
238:21 241:2,21	convenient 96:1	cost 43:21,22,23	92:10,22 93:13
242:1,16	convergence 193:12	44:3,10,19 46:15	96:12,22 97:2,5,6,9
conspire 258:18	conversation 53:10	47:2 49:3,12,16	97:10 105:10
constant 231:20	55:23 70:3 71:10	51:2 52:4 53:1,7,25	109:17 110:1
constituted 171:22	72:4 116:13 256:6	55:5 62:1,9,11,15	111:12 115:7,10
consultant 189:12	conversations 41:21	62:16,24,24 63:3	126:19,20 127:8
consultants 189:19	70:22 84:24 86:21	64:6,18,18,25 66:1	135:22 136:15,18
consulting 13:17,25	87:5 116:11 126:11	66:22 67:2,4,18,22	138:4 141:13,25
14:2,3,4 189:13	126:17 129:15	71:8,15,21 75:3	142:12,14,18,20
258:8	229:25 240:21	77:19 79:1,2,5,13	143:1,5 149:7 160:6
consumer 38:9,18	coordinating 199:4	79:22,23,23 80:1	160:7 161:2,10,12
54:9 59:12 67:21	199:12	81:7 87:22,24 89:11	165:14 194:2 200:8
80:7 93:4 101:12	coordinator 171:2,6	89:11 91:25 92:15	231:3,6,9 234:14
131:12 143:18	171:10,12,19 172:4	93:17 96:7,9,18,23	235:24 236:11,17
149:4,7 164:21	178:9,11,13	111:14 112:6 115:5	250:13,22 251:1,13
165:6,8,18 192:16	coordinator's 178:4	121:7 126:18,20	257:14,20
consumers 59:15	coordinators 171:4	130:12 134:8,25	counsel 9:5,5 10:1
144:5,23 148:5,25		135:1,10 136:5,12	12:13 66:3 197:17

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

[counseled - damaging]

Page 11

counseled	195:18	19:14,18,21 20:13	104:8,8,10 105:8	258:23
counselors	124:9	20:25 21:7 23:15,17	108:19 109:5 110:5	cts 14:23 35:2
	178:20,25	23:20 24:3,21,25	112:7,24 113:1	60:17,23 150:12
counted	21:25,25	25:3,20 26:6,18,22	114:14 115:10,14	152:11 243:2,10,16
country	16:16	27:3,6,13,21,25	115:15 117:2,5,11	crystal 194:18
	113:11 115:21	29:18 30:4,11,23	117:13 119:1	etc 173:19 221:14
	116:12,16 256:7	31:8,14,19 32:13,17	120:19,21 121:17	etc's 176:3
counts	138:16	33:1,2,5 34:17	121:20 122:1,4,12	culture 149:15
couple	10:24 17:11	35:10,18 36:10	122:13 127:25	cumulative 229:7
	61:12 162:21	38:12,21,24,25 39:3	132:24 133:4	current 36:14
	211:15 238:18	39:4,9,10,16 40:7	134:19 135:9,14	currently 36:4
	249:21	40:12 41:2,17 43:16	136:5,23 137:2,6	customer 38:5 46:23
course	30:6,12 34:4	43:24 44:3,21 45:2	139:3,15 140:16	50:11 102:4 143:7
	91:16 122:4 145:4	47:9,20 48:5 49:8	141:12 142:3,5	157:20 158:7,8,14
	193:18 221:16	49:24 50:6,19,20	143:1,5,19 144:2	158:19 168:17
	223:7 243:1	51:2,8 52:4,24	145:14,15,23,25	175:10 193:13
court	1:1 9:17 11:2	53:25 54:15,21 55:8	146:7,8,24 147:1,9	196:10 215:3,11
	40:19 69:22 142:7	55:13 56:16,18,23	147:22 148:14,23	216:11 223:25
cover	10:25	57:6,15,21 58:1,5	149:11 150:5,8,16	225:20,22 226:4,10
covered	75:21,24	58:12,18,23 59:10	150:21 151:5	226:17 235:23
	76:9,13,17,19,22	59:23,24 60:9,10,18	152:16,22,24,25	customer's 46:17
covering	76:6	60:23 61:2,2,17,20	153:13 156:15	customers 12:7
craig	203:15	61:23 62:1,10,16,25	157:4 159:10,21	50:14 155:20
create	147:14	63:3,8,9,19,20 64:7	160:9,12,18,22	157:12,17 165:24
	177:10 185:6	64:13,14,23,24 65:6	163:2,9,15,23	193:10 194:25
created	41:11 98:3,5	65:7,11,19 66:1,16	164:10 165:4,13	217:9,16 234:16
	155:24 156:24	66:19 67:1,2,5,21	168:20 171:10	255:24
	160:3 168:14	67:22 68:6,10 69:15	173:12 176:11	cut 40:19 98:17
	182:23 188:24	70:12,14 71:7 72:15	182:25 185:16	cycle 29:3 34:20
creates	44:7	72:16 74:18,20 75:6	186:2,4 191:2 192:2	80:13,16,21 81:1
creating	39:4	75:24 76:6 77:3,8	192:10,23 193:5,17	152:24 179:7 232:4
	130:10,14 177:12	77:18 78:8,10,19,21	193:19,23 194:6,11	237:19
credibility	109:1,5,8	78:25 79:3,16,18,24	194:21 195:6,10,22	cycles 179:8
credit	83:9,12,16	80:4,13,16,20,22	195:25 196:4,9,13	d
	85:2,12 92:12,24	81:11,25 82:4,13,17	196:16,19 198:1	d 9:1
	96:15 97:4	82:20 84:18 85:17	199:4 200:14	d.c. 7:14
credits	83:2,3,4	85:20,25 88:3,6,9	202:19,22 203:4	daily 116:6,17
	84:17 85:6,16 86:23	88:11,15 89:14,19	205:8,22 207:8	117:18 177:21
	87:2 93:16 96:21	90:9,12 91:21 92:2	214:10 216:10	178:19,24 179:1,2
croll	2:11 9:17 20:21	92:9 93:21,24 95:6	234:16 235:6	damage 108:5,18
crowell	7:12	95:16,24 96:9,24	238:21 243:16	damaged 28:5
crowell.com	7:16	97:5 98:2 99:5,16	244:1 249:18,20,22	145:12
crt	1:7 9:23 12:6	99:19 100:2,6,10	251:15,17 252:12	damaging 210:22
	14:18,21 15:1,11	101:1,17 102:8,16	252:16 255:14	
	16:9 17:16 18:9	102:19 103:7,12,23	257:13 258:12,17	

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

[daniels - different]

Page 12

daniels 7:20	decided 55:12	deliberate 37:12,20	derrick 208:22,23
danny 20:19 68:24	101:13 111:11	deliver 88:9 121:1,2	209:13,16,21
69:4,5 123:9,13	deciding 26:5 30:23	138:25 215:6,8	descend 127:8
137:17	55:15 219:14	delivered 72:20 88:3	describe 137:15
data 42:15,18,19	decision 26:18 30:25	delivering 88:22	described 169:19
97:7 115:9 163:18	37:16 65:16 104:15	97:13,14 118:13	171:19 190:17
163:18 173:1,2	144:7 210:5	delivery 34:6 88:6	describing 17:25
204:21 205:3,4	decisions 26:22	88:24 89:1 215:7	description 8:14
212:18 232:13	33:22 35:11,18 47:3	dell 5:12	172:6 214:8
database 212:8	61:21 101:21	deloitte 189:7,16	designated 170:20
date 9:13 17:13 81:9	138:17 150:23	deloitte.com. 189:4	desirable 101:23
94:15 147:16 151:2	206:22 207:7	demand 33:7,8,12	102:1
181:19 216:18	decline 150:8	33:14,22 36:11 38:3	desired 72:14,19
david 74:14,15 75:1	decrease 66:18 67:4	38:4,5,10,12,14,21	despite 243:3
75:7 106:8	96:9,23 97:4 133:12	45:12 46:17 50:3,6	detail 206:3
day 73:21,21 79:9	143:4,6 146:6,24	50:11,14 105:11	determination
98:14,15 115:2	187:24 235:3,6	120:5 137:9 160:2,3	28:14
118:20 148:21	251:12	160:5	determinations
151:11,25 179:9,11	decreased 66:17	denies 127:7	33:16
237:7,10 238:5	67:2 145:13 146:16	denver 7:23	determine 60:9 62:4
259:20 260:18	251:13 257:14	department 23:22	82:3 101:19,20
days 51:23,23,23,24	decreases 133:10	23:24 24:2,9 124:5	152:3 159:6
115:2 179:16 237:6	145:24 247:22	180:14 209:3,4	determined 83:9,10
237:18	decreasing 90:1	departments 229:7	95:8,11,13 100:15
dc 7:6	97:6 200:15 251:7,8	depended 79:4	148:19,21 171:25
deal 41:8 82:8 91:25	defendant 2:6	235:24	determining 20:24
108:4,10,12,14,17	238:16	depending 164:3	34:11
149:19 156:25	defendant's 8:14	depends 218:6	develop 52:13
165:10 187:10	defendants 3:20	deploy 224:18	developing 104:7
210:8	4:19 5:20 7:9,25	deponent 9:24	development 51:18
dealing 187:8	197:15 227:14	deposed 10:12,14,15	52:9,12 53:9,13
235:12,15,16	238:13 239:23	deposition 1:13 2:4	54:3 89:13,19 92:19
dealt 103:17 205:1	241:12,20 244:18	9:7,8,15,20,21	devices 219:7
228:14	defending 10:6	10:21 11:20 12:11	diagonally 30:7
deason 1:13 2:5 8:4	define 22:9 38:5	12:15,19 13:7,10	dictated 207:14
9:9,16,25 10:9	defined 173:13	22:8 53:16 60:2	differ 228:2,4
12:10 14:3,4 56:10	defines 161:14	68:14 74:5 105:18	difference 72:19
97:25 133:25	definitely 71:23	122:21 126:22	149:15 155:3,4
186:22 202:12	121:11 203:19	128:10 137:10	212:3
227:9 238:19	definition 58:14,16	141:24 142:1 154:2	different 24:6 30:3
249:17 252:2,10	100:18,20 159:16	169:12 186:16	32:25 33:7 71:13,15
259:16	171:23 176:20,21	198:5 208:14	71:17 77:14 120:9,9
decade 124:2	degree 55:17 101:23	219:16 239:4 259:5	146:12,13 147:1
decide 72:5 164:16	136:14 193:11	259:8 260:7	148:10,16 162:9
166:21	196:9 224:4		197:21 203:19

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

[different - duly]

Page 13

207:5,10 211:15	211:15 212:15	divide 115:5	168:5 171:18 187:3
212:16 213:17	213:5 224:20	divided 18:1,5 31:8	187:16 190:1
218:16 226:6	227:25 233:15	division 1:3 15:3,20	215:13,23 216:22
228:13 248:5,8,8,13	252:1	15:21 16:1,15 18:20	218:23 220:14,15
248:14,15,15 249:1	discusses 248:4	18:25 20:15 23:23	223:18 225:18
differently 147:20	discussing 11:22	24:14 27:5,9,10	230:13 231:12
difficult 207:5	58:23 77:21 92:6	31:11,18,22,25 32:5	dollar 144:2,4 235:8
dig 105:16	99:3 106:13,16,20	39:14 106:6,7,9	235:12,15,18
dime 124:20	107:10,12 108:1	114:1 120:13,15	dollars 90:22 96:16
dinner 129:18	134:3,6 135:22	170:22 222:18	118:19,21 130:20
direct 26:25 38:25	140:3 157:23 158:4	divisional 18:18	131:14 172:10
124:18 130:4	182:11 188:15	24:18	domestic 113:2
155:17 176:23	195:7	divisions 18:2,6,7	dominant 153:22
219:23	discussion 28:21	23:19 41:12 42:20	don 109:21
directed 160:8	79:7 83:20 135:3	dm 172:11,13	door 38:6 177:5
178:22,24	discussions 16:22	dmm 24:21,23,23	doubt 95:23
directing 74:25	42:22 53:9 67:16	120:12	doug 20:19
direction 16:5	70:6,19 72:7,9,11	dmms 119:20	dowdy 74:14,15
215:24	73:1 79:11 137:21	document 1:9 11:15	75:7
directive 95:9	217:12,14 242:4,7,7	12:16,22 68:17,18	dowdy's 75:1
directly 39:6 40:5	244:17 250:15,19	69:18 73:19 74:7	download 187:17
45:19 92:22 93:13	display 24:12,21	105:21,23 107:1	190:11,12,13 237:7
103:18 204:17	25:19 31:4,17,19	119:4 122:24 123:3	237:10,15,25 238:1
disadvantage	52:21 92:25 194:18	123:8 126:8,25	downloaded 187:18
132:20 215:9	209:4,8,12	128:14,17,21,22,23	188:14 212:15
discern 206:11	displayed 24:22	135:12 136:7	237:10
210:21	30:1 52:18	137:13,24 154:4	downloading
disclosure 67:8	displays 93:18	157:11 169:15,16	187:19,23 188:9
230:14	disruption 130:10	181:4,7,12,14,16,23	downloads 187:7
discontinued 32:13	130:14	182:7 183:7 184:4,6	237:5
32:17	disruptive 213:19	186:18,19 210:25	dozens 165:1
discounted 167:9	distinct 29:13	239:7 244:16 245:6	draft 181:7,12 184:4
discounts 12:5 89:3	distinguish 88:18	247:2,12	drafted 168:4
89:5 92:13,21 167:4	distinguished 99:18	documents 12:14	drill 212:24
228:9	distribute 101:4	13:6 32:7 93:2	drive 184:23 186:14
discover 238:20	distributed 100:13	95:21 119:16	driven 46:18 180:4
241:11	101:5	169:21 170:6	180:5
discuss 43:21 67:8,9	distributions 109:17	doing 22:1 33:20	driving 50:7 184:17
72:14,18 115:15	110:2	35:23,24 36:5,17,19	drop 155:20,21
126:19 205:15	distributors 39:9,12	37:19 44:7 47:24	156:18 157:13,22
214:1	39:17,19 40:6	56:19 60:7 67:10	158:4 223:17
discussed 17:9	district 1:1,2 29:11	78:15 96:15 107:10	dry 98:17
57:19 58:11 174:2	128:25 172:14	108:25 116:22	due 51:23
183:10 190:15	176:23 177:2 260:3	126:16 130:18	duly 260:8
207:9 209:15	260:6	160:24 164:15	

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

[duties - exhibit]

Page 14

duties 16:15 171:19	elected 185:14	57:10 202:14	examine 113:1
duty 75:4	electric 5:20	entity 43:11,12	examined 2:6
dvd 15:11 58:15	electronic 93:4	56:17 59:24 60:9	example 24:20
104:7	101:12 188:10	61:19 198:22	31:14 32:3 36:16
dynamic 112:23	electronics 3:20	entry 134:7,24	37:22 42:11 47:9,24
e	38:20 56:23 69:3,14	240:13	51:24 101:10 104:2
e 3:2,2 4:2,2 5:2,2	80:7 123:19 164:21	environment 155:21	112:13 137:1,7,7
6:2,2 7:1,1 8:2,2 9:1	165:6,8 192:16	155:22 177:11,12	140:15 150:24
9:1 39:14,16,20	203:15,16	234:25	151:21 215:5
189:21	eliminate 29:6	environments 156:3	218:25 228:3,7
earlier 35:17 74:16	eliminated 29:5	equal 104:15	229:10 234:1,10
93:7 94:12 98:13	elite 55:4 120:17	equivalent 18:19	249:25 251:6,8,11
110:13 137:2 174:2	ellis 6:15	error 20:13	examples 141:18
183:11 190:16	email 69:11,13 70:1	especially 30:4	145:7 236:25
193:19 202:18	70:10 75:1 111:17	esquire 3:3,4,13	exception 193:18
204:15 206:23	186:23 189:8	4:13 5:5,14 6:5,14	exceptions 41:1
207:9 212:5,15	208:21 209:5 210:3	7:3,11,19	148:8 153:3 184:18
220:2 224:3,20	emails 189:3	established 233:19	218:24 219:3
226:11 227:17,25	employ 45:1	estimate 149:23	excess 95:12 149:3
231:10 233:15	employed 13:12,15	et 33:10 34:21 40:17	149:25 150:5
235:21 244:11	123:20 198:22	116:18,23 153:2	159:25 186:7 236:6
245:22 248:13	employee 13:22	evaluate 189:19	exchange 52:5 53:1
251:18 252:10	123:24 213:11	evaluated 97:11	excluded 153:6
253:25 257:9	220:25	eventually 23:12	exclusively 40:8,13
early 201:3 232:10	employee's 48:15	everybody 20:4	excuse 209:1
232:11 255:19	employees 20:24	29:12 45:6,17,20	execution 176:24
earn 249:1	21:6 23:14 42:21	99:13 110:11 111:1	exercise 214:22
earned 248:8	94:7 170:14 177:21	129:20 132:21,23	exhibit 8:14,15,16
ease 182:23	189:7 204:17	144:10 164:20	8:16,17,17,18,18,19
easel 155:19	209:24 213:15	165:25 166:1,25	8:19,20,20,21,21,22
easier 219:15	214:17,25 217:5	177:25 180:18,19	8:22,22,23 11:16,17
easiest 91:1	219:6,11 220:24	190:11 213:2,3	12:19,22 13:2 14:15
easy 167:7 225:10	employer 13:24	238:1	15:1 68:14,17,21
effect 96:15 130:11	employment 12:17	everyday 148:15	73:16,25 74:5,8,11
effective 71:2	14:14	166:11 170:10	76:4 105:18,20
159:24 184:19	enact 140:15	183:5	106:2,12 108:17
effectively 188:9	encourage 95:10	exact 17:13 94:15	122:21,23 124:19
effort 174:20	endings 145:5	137:20 194:23	126:22,25 128:10
either 33:20 36:11	enemy 205:3	exactly 27:17	128:12,13 134:1
37:17 58:15 60:4	engaged 197:15	111:21 204:5	135:13,22 137:10
89:7 106:6,9 111:22	engaging 108:4	213:12 247:1	137:12,15 140:15
112:19 113:18	entire 16:16 17:10	examination 8:5	154:2,5,9 169:12,15
172:11 183:12	37:18 42:5	10:8 202:17 227:15	169:19 186:16,19
189:4 231:7 236:22	entities 4:10 6:20	238:17 249:16	186:23 188:3 189:2
	14:5 42:23 43:4	252:9	190:18 198:5,7,8,11

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

[exhibit - finished]

Page 15

200:1,13 208:14,17 219:16,20 239:1,3,4 239:7,15,24 244:10 244:10,12,15 257:23 258:11,16 258:22 exhibits 8:14 exist 144:6 existed 19:5 154:12 existence 238:20 241:25 242:15 expect 71:14 99:8,13 105:13 109:25 122:18 124:24 205:4 248:13 250:21 expectation 122:19 251:2 expectations 109:18 expected 71:18 87:9 121:12,16 125:6 139:5 150:7 177:7 177:10 201:25 243:11 expecting 71:12 expenses 114:19 expensive 156:10 experience 39:12 52:6 61:10 63:7,18 64:9 82:9,20 125:24 193:13 215:3,4,11 230:24 235:2 250:22 experienced 40:17 expires 260:25 explain 125:10 194:15 explanation 254:10 express 23:8 36:8 203:15 expressing 107:21 126:5 extent 20:10 76:12 76:19 139:22 141:21 181:11	extraordinary 223:12,20,24 extremely 39:13 104:21 114:11 f f 8:2 119:15 facility 61:14 fact 35:22 37:12 46:18 54:7,10 58:9 70:21 98:21 140:3 247:16 factor 37:10 46:15 46:22 47:2 49:25 50:7,13 98:16 206:21,23 211:4 236:5,7 248:23,24 factored 161:6 factories 60:2 factors 33:7 34:3,8 46:19 49:12 59:1 98:21 99:18 104:19 105:3,14 214:25 228:19 236:2 factory 60:3 203:1 facts 138:1 169:24 199:21 245:19 246:18 247:12 faegre 7:20 failed 118:24 fair 109:17 110:1 230:19 248:7 fall 20:1 35:3 59:1 familiar 68:20,23 74:1,10,13 76:5,8 76:12 79:16 81:2 94:2 100:9 106:1 123:9,15 126:4 136:17 154:8 169:18,21 172:16 173:23 174:8 180:13 181:5 182:6 182:13 184:11 186:22 189:4	198:18 258:5 familiarize 123:2 128:16 157:9 familiarized 219:25 far 22:1 29:15 41:15 55:21 65:22 66:12 99:12 126:17 135:1 179:25 193:15,16 212:19 216:17 fare 114:21 fargo 7:21 fashion 131:8 fast 215:6 faster 85:4 favorable 52:1 62:15,24 63:3 64:6 108:4,10,12,14 125:21 fax 5:10 feature 43:8 45:18 featured 59:3,5 130:17 196:22 210:6 246:13 247:6 249:3,4 features 31:14 46:16 244:24 254:20 february 35:5 199:3 feedback 255:23 feeds 45:21 feel 123:8 128:17 feet 90:22 fell 59:10 felt 149:10 field 45:17 166:12 171:13 184:20 figure 206:18 file 257:24 filed 239:22 240:12 241:7,10 fill 255:12 final 27:12,17 127:4 151:14,14 157:13 157:22 158:4 finalized 120:2	finally 257:4 financial 119:15 find 21:23 102:1 119:25 120:1,3 157:20 158:15 175:15,20,23 209:22 212:25 214:14 216:22 220:18 226:4,15 fine 12:25 109:11 finish 11:10 finished 12:6 14:19 14:21 15:2 16:9 17:16 18:9 19:14,18 19:21 20:25 21:7 23:16,17,21 24:3 25:3,20 26:6,23 27:3,7,13,21,25 30:11,23 33:5 34:17 35:10,18 36:10 38:12,21,25 39:5,9 39:10,17 40:7,12 41:2,17 43:16,25 44:3,21 45:2 47:20 48:5 49:8,24 50:6 50:20 51:3,9 52:4 52:25 53:8,25 54:15 54:21 55:8,13 56:16 56:23 57:6,15,22 58:5,12,18,23 59:11 59:23,25 60:10,18 60:23 61:3,21,23 62:10,16,25 63:4,8 63:10,19,21 64:7,14 64:23,24 65:6,7,11 65:19 66:1,16,19 67:1,3,5,21,22 68:6 68:10 69:15 70:13 70:14,16,25 71:7 72:15,16 74:18 75:7 75:24 76:6 77:4,19 78:9,10,20,22,25 79:3,16 80:4,22 81:11,25 82:5,13,17 84:18 85:25 88:3,7
--	--	---	--

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

[finished - gathered]

Page 16

88:9,11,15 89:14,20	94:10 95:20 96:10	forgot 245:9	fourth 129:7 198:25
90:9,12 91:21 92:2	105:11 106:2,11	form 17:19 18:11	199:1 200:13
92:9 95:6,16 96:9	108:10 110:15,15	21:1 27:15 50:2,24	257:25 258:6
96:24 97:5 98:2	112:12 115:2 123:4	60:12 62:6,19 63:15	francisco 1:3 3:17
99:5,16,19,25 100:6	123:5 133:7 134:1	64:16 67:6,25 69:19	6:17
101:1,17 102:9,16	169:19 194:1	70:18 103:15	frequency 212:2
102:19 103:7,12,23	198:25 220:19	106:15 107:3	232:1
105:8 108:19 109:5	222:23 240:13	121:22 125:3	frequently 52:19
110:5,6 112:7 113:1	241:6,19,24 242:25	127:11 130:8,24	63:2 77:22 78:9,20
114:14 115:10,14	fiscal 35:4,6	131:9 134:22	80:5 168:3
115:15 117:3,5,11	fit 40:3	136:10 140:19	friday 179:18
117:13 119:1	five 14:12 116:23	143:21 145:19	185:17 186:1 190:4
120:19,21 121:18	122:16 188:19	147:14 159:2	210:4 216:19
121:20 122:1,4,6,12	224:15 229:3	160:25 200:6	front 242:23
122:14 127:25	fix 258:12	213:20 235:9 245:7	full 59:3 170:24
132:24 133:5	fixing 198:3 258:18	245:20 246:10	171:18 249:2
134:19 135:9,14	258:23	247:11,19 252:21	function 44:9
136:5,23 139:4,15	floor 3:16 6:7,16	253:2,18 258:24	178:24
140:16 141:12,14	79:9 84:11 90:12,18	formalized 44:5	functionally 16:3
143:2,5,19 144:3	145:10 167:10	format 220:5	fund 92:24,25 95:21
145:14,15,23,25	172:25 193:6 218:8	former 83:17	233:4,6,10
146:7,8 147:9,22	255:1	forms 93:20	funded 95:16
148:14,24 149:11	floors 90:14 94:13	forrester 163:8	187:15
150:5,8,16,21 151:5	focus 31:22 165:7	forth 41:22 260:8	funding 82:11
152:16 159:10,21	173:22,22 174:4	forthcoming 254:3	104:24 161:6
160:9,12,18,23	176:5,7	forward 10:3 151:3	funds 51:18 52:9,12
163:2,16 164:10	focused 49:10 129:8	151:12 178:2	52:12 53:2,9,13
165:4,13 168:20	focusing 16:7 127:4	183:20 254:23	54:3 67:8 89:13,16
171:11 173:12	folks 94:10	fose 9:7	89:19 90:9 92:6,19
176:12 185:16	follow 185:14 220:5	found 167:24 219:3	92:19 93:4,8,10,15
186:3,4 191:3 192:2	following 17:1 125:8	foundation 65:1	96:8 105:6 161:10
192:10,23 193:5,24	180:6	73:18 75:10,25	227:22,23 232:23
194:11,21 195:6,9	force 126:12 255:5	84:22 108:21 119:6	further 196:17
195:10 196:5,19	forces 101:13,14	127:17 128:6 134:5	238:11 249:11
198:2 200:14	forecast 33:11 42:12	138:2,20 139:19	252:3 259:1,4
202:19 203:5	163:24	149:12 161:7	260:12
205:23 232:19	forecasted 41:21	181:13 182:2	furthermore 143:13
235:6,22 249:22	42:16	191:23 199:6,14,22	future 203:14
251:15,17 252:12	forecasters 163:8	200:5,17 201:9,17	g
252:17 255:14	forecasting 34:15	221:4,24 245:18	g 9:1 11:23
257:13	164:13	247:10	ga 5:8
fiori 186:25	foreign 114:14	four 15:23 39:25	gather 167:3 191:7
firm 227:12	117:2,11 256:7,8	90:23 187:16 219:3	gathered 213:6
first 12:4 17:11	foremost 96:10	224:15	
33:23 62:11 75:1			

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

[gathering - group]

Page 17

gathering 203:25 214:22	gives 144:9 225:22 giving 104:19,20 129:1 229:21 230:21 256:16	71:13 72:6 74:7 76:9,17 79:6,17 83:23 84:2,4,13 87:1 89:23,25 90:4	256:1,2,5,12,21 good 9:11 10:9,10 55:24 98:24 104:5 104:11,13,18,21 105:3,4 118:25
gawley 6:14 138:1 239:13,13,19 253:2	glories 127:7 gm 172:11,13	90:17 92:15,17 99:9 99:10 103:2 105:20	105:3,4 118:25 127:13,19 149:11 202:12 203:16 214:17 232:17 249:17
ge 223:2 246:12 247:5 248:5	go 10:2,23 12:21 21:13 32:8 34:3 37:25 47:10 61:12	108:25 110:16 111:12,21 112:16 113:18 114:11	249:17 goods 93:14 126:14 126:15 247:23
general 24:6,10,16 28:11 29:3 33:14 67:7 78:5 80:8 119:21 140:21 153:7,8 172:13 186:6 203:6 216:5,7	73:2 75:5 79:19,20 80:4,11 86:21 92:15 93:13 96:5 97:16,17	116:8,9 120:1,2,25 121:3 122:17,23 123:3 126:25 128:8	gordon 2:11 9:17 gotten 48:7 grab 131:23 grabbing 212:3 gralewski 6:5 8:10
generalize 235:11 generally 29:2 34:22 35:1 37:5,9 44:17 72:23 85:9 91:12 129:12 131:15 134:17 140:14 160:9 170:9,23 176:14 203:9 218:22 233:9 235:2 235:11,24 236:10 250:3,5 251:20	104:18 110:10 111:2,4,6,22,23 114:8 129:5 130:2 133:15 138:5,6 141:3 146:19,22 147:17 157:19 158:6,7 166:15,19 167:21,23 168:11 171:16 175:20,23 176:22 183:1 190:25 191:1 202:3 202:3 206:18 207:2 208:6,11 209:22,24	130:2,23,24 139:9 139:10 140:4,5,7,8 140:20,24 141:2,3,3 141:9,10 142:24 144:19 145:6 148:1 148:9 149:8 151:3 151:11,18 153:4 154:4 155:25 161:21 162:17,19 162:22 163:25 166:4,22 168:8 169:1,14 170:11 174:16,17 176:1 177:18 178:1,10,14 178:19 184:21 185:23 186:8 190:11,12 194:2,4 195:19 198:7 200:9	17:19 40:18 43:1 50:2,24 51:5,11,15 53:15,20 60:12 62:6 62:19 63:15,22 64:16 67:6,25 69:19 70:18 77:11,24 96:1 103:15 106:15 107:3,17,22 108:7 108:23 109:15 121:22 125:3 127:11 130:8,24 131:9 134:22 136:10 140:19 142:7 143:21 145:19 159:2 160:25 200:6 235:9 245:7,20 246:10 247:11,19 249:15 249:16,18 251:3 252:2
gentleman 239:9 georgia 15:23 getting 72:25 89:22 96:16 125:21 137:3 145:11 149:11 185:10,11 229:21	212:9,18,25 213:16 214:5,9,9,10,13 215:7,16,23 217:15 217:18 218:25 220:25 221:21 223:21 224:11,12 226:3,15 231:7 232:6 238:6 241:3 243:5	141:9,10 142:24 144:19 145:6 148:1 148:9 149:8 151:3 151:11,18 153:4 154:4 155:25 161:21 162:17,19 162:22 163:25 166:4,22 168:8 169:1,14 170:11 174:16,17 176:1 177:18 178:1,10,14 178:19 184:21 185:23 186:8 190:11,12 194:2,4 195:19 198:7 200:9	great 22:15,24 56:1 grew 165:8 ground 10:25 group 15:21 24:7 25:5,6,7,7,11,19,21 28:12 29:7,14 41:19 42:2 47:8 98:3 119:15 180:17 209:9 220:16,17
give 35:14,21 37:22 90:21 104:24 105:16 107:5,9 126:12 132:10 136:15 150:23 157:14 163:24 164:2,4 194:23 201:19 226:14,17 230:3,9,16 231:25 254:9,18 257:1	goal 50:12 134:14 goals 89:9 godfrey 3:5 10:5 goes 45:20 75:15 104:17 110:19 155:8 212:20	200:24 201:22 203:17 208:11,16 209:18 214:14 215:21,23 216:3,24 217:17 220:18 222:24 223:15	249:16,18 251:3 252:2
given 30:24 86:19 161:14 214:4,7 230:15 234:14 255:23,24 260:10	going 9:2,3 11:15 15:17 21:15 31:6 33:12,16 37:16,25 38:18 42:13 48:16 55:18 68:16 70:21	224:14 230:12,15 233:5 237:2,3 239:25 242:6 243:11 254:12,22 254:22 255:21	28:12 29:7,14 41:19 42:2 47:8 98:3 119:15 180:17 209:9 220:16,17

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

[group - include]

Page 18

223:14	179:3 237:5	133:8 136:18 153:2	186:17 198:6
grouped 173:8	happening 141:19	160:2,3,5 179:16,19	208:15 219:17
groups 24:5,6,17,19	happy 11:11	187:13 198:2 206:1	239:5 260:24
25:1 29:9 151:17	hardware 152:12	higher 52:4 53:1	identified 10:2
guaranty 154:19,20	harmful 132:5	59:2,4,14 125:11,25	226:18
155:5,12 224:20	harming 108:2	126:6,13 131:20	identify 29:15 33:4
225:6,7	head 11:6 38:9 48:6	133:5 134:25 183:3	152:10 226:22
guess 80:14,15	113:25 114:4	183:5 200:23 208:2	identity 61:19
87:14 193:3 246:16	128:24	208:11 228:8 249:3	igor 20:21
246:25 248:17	heading 183:20	highest 72:24 133:9	ii 93:3,7,11
guidance 31:1	220:19	highly 55:22 95:15	iii 4:4
guidelines 68:5,9	headquartered	136:24 156:1,2	illinois 5:17 22:4
150:17 213:10	40:24	historical 33:8	immediately 241:9
guy 113:17 157:21	headquarters 26:10	history 12:17 34:5	impact 79:4 106:17
166:16 177:5	116:20	48:8 89:21 118:12	106:21 107:10,11
185:22 206:19	health 127:9	hit 118:6	121:3 141:4 148:24
230:15	hear 146:13 241:15	hitachi 6:20 38:16	167:8 195:4 196:3
guy's 126:20 134:25	heard 10:23 54:11	56:16,19,20 104:5,8	impacted 75:3
135:1	74:3 221:8,10	104:12 107:13	impacts 71:24
guys 135:5,6 230:12	222:14	137:21,23 138:5,14	implement 236:8
255:25	heaven 127:8,16,19	252:25	237:24
h			
h 4:4 11:24	heck 220:18	hold 161:19	implemented 84:18
half 34:23 113:22	hectic 168:11	home 15:5 25:8	85:7 99:3 147:8
115:2,3	held 9:21 13:3 18:20	111:9 255:15	148:5 237:11
hand 9:24 11:15	19:8 40:16,23 41:12	hope 211:12 212:13	implies 201:11,20
68:16 155:19	99:8 171:9	hoped 122:13	imply 76:17 109:19
208:16 238:25	hell 128:4	hopefully 167:10	important 92:8
239:6 256:2 260:18	hello 156:4,21	hopes 162:21	109:4,7 134:13
handing 219:19	help 13:3,10 52:14	horn 5:14	185:18 211:4,7,11
handle 213:16	52:15 84:9 96:16	horrible 215:14	223:19 224:5
handled 19:6,7	120:20 129:24	hotel 114:21 115:6	importing 41:13
147:20	178:15,16	hours 231:12	improve 118:15
handwriting 105:22	helped 187:6	houston 3:8	improved 54:20
hung 107:18	helpful 216:2,5	hubbard 2:10 9:18	inch 29:23,23,23,24
happen 43:6 55:1	222:10 224:6 232:2	260:5,24	29:25 30:5,6,10,10
77:23,25 78:3 79:13	helping 164:16	huge 165:11	30:10 31:3,3 45:15
111:8 112:22,22	hereinbefore 260:8	i	47:9 75:15 112:12
116:7 134:15	hereunto 260:17	idea 84:7 177:18	137:2,6 156:15
140:21 179:7 230:1	hesitating 230:11	ideas 124:22 125:1	163:23 173:9 223:2
235:18,19 236:19	hey 230:1	identification 12:20	inches 31:5
250:21 256:6,8	hh 203:14	68:15 74:6 105:19	incidentals 114:22
happened 61:13	hi 227:9,10	122:22 126:23	include 15:19 16:10
73:1 77:21 101:8	hidden 218:9	128:11 137:11	17:6 25:8 52:16,17
	high 38:4 57:20	154:3 169:13	172:25 173:1 182:9
	58:24 59:10 132:19		

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

[Included - joke]

Page 19

included 15:15 16:13 17:8 52:18 86:8 87:17 93:11,17 153:21 154:1 156:16 177:12 206:2 includes 34:4,4 including 16:22 98:21 190:3 inclusive 163:19 income 172:9 incorporated 14:3,4 increase 75:4 80:1 83:21 89:25 118:17 118:18 129:23 132:19 141:25 146:25 149:5,7 201:3,14,16 210:15 235:22,23 236:16 236:18 246:1 248:1 increased 141:13,21 142:5 188:1 increases 133:12 236:9,9,19 increasing 200:16 incredible 149:19 222:14,15,17,18 223:3 incurred 162:11 indemnification 99:9 independent 13:18 13:23 28:23 independently 144:7 index 8:14 indicated 258:12 indicates 220:24 indication 256:17 258:10 indicators 163:20 indirect 6:11 individual 80:23 102:20 150:14,20 151:4 160:22	219:14 individually 166:17 industry 33:11,25 34:15 200:19 238:21 influence 104:15 105:7 118:8 119:24 172:1 196:8 influenced 102:23 information 42:4,9 60:15 62:4 67:16 79:8 147:22,24 161:1 163:1,14 164:9 166:3 167:3 167:11 170:12 174:25 175:15 177:8,23 178:18 182:10 191:7,19 199:1,25 201:6 204:1,8 205:1 206:20 207:18 211:3,9,16 212:1 213:22 214:21 216:1,8,21 217:6,10 218:12 222:8,10 226:1,18 244:7 254:18 256:15 257:10,16,16,20 258:21 initial 86:4 initially 44:22 initiate 183:23 184:12 185:2 258:23 initiating 185:15 innovations 118:15 input 170:12 188:13 inside 118:22 insist 233:13,16 instance 31:9 36:25 51:1 53:24 144:23 216:18 221:20 instances 39:8,15 41:16 52:3,20 99:24 115:23 142:4,16,25	216:7 219:6 232:6 243:3 instantly 237:4 instruct 243:12 instructing 241:16 instruction 241:22 instructs 18:13 intelligence 208:1 209:14,19 210:4,12 210:20 211:19 213:7 intended 65:6,11 84:20 intense 223:11 224:9 interaction 213:23 interchangeably 117:8 165:19 interest 36:6,9 interested 36:21 195:21 225:25 260:14 internal 72:11 internet 226:5 interpretation 201:20 interrogatories 13:19 197:18 interrupt 96:3 217:22 intersect 195:2,3 introduced 31:18 58:10 95:25 136:25 137:2 204:15 255:21 introduction 31:24 34:20 35:3 80:8 251:22 introductions 30:19 invariably 187:12 invented 80:19 inventory 42:12 81:17 85:13 95:12 148:23 149:3,6,10 150:5 159:25	164:13 186:7 191:21 218:2 220:22 221:1,22 223:6,21,24 236:6 investigated 199:17 199:25 201:24 investigation 244:1 244:8 258:23 investigations 242:15 243:9 involved 15:6,9 20:5 20:6,17,19,20 45:19 104:7 152:24 154:13 156:1 209:13,16 229:6 235:13 involving 257:3 issue 50:1 165:11 248:18 issued 98:6 issues 129:2,19 210:1 item 82:8 145:8 220:22 225:15 items 39:25 118:16 177:6	J j 6:5 japan 111:2,4,23 116:17 jay 68:24 69:1 jbrew 7:16 jeffrey 7:19 jenner 5:15 jenner.com 5:19 jim 198:18,21 jihad 3:10 job 166:23 170:14 170:17 171:6 209:22 john 3:4 7:11 10:5 238:15 joke 118:22 164:20
--	---	--	---	---

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

[jonathan - large]

Page 20

jonathan 3:3	74:19,20 77:10,12	knowing 91:14	96:25 97:8 98:12
jr 2:10 260:5,24	79:25 80:13 82:15	126:3 176:9,18	102:10,22 105:9
july 15:12 181:19	83:13 86:22 87:18	177:13 224:3	107:1 108:8,21
jumped 8:22	88:11,18 89:17	knowledge 42:22	110:7 113:5,8
jvc 14:11,13 38:16	94:15 95:19,23 97:1	45:10 48:14 49:1	115:24 117:6 119:6
k	102:12,14 103:18	56:15 58:9 60:6	120:23 125:2,19
k 3:13 32:20,22	104:9,10 106:19	82:18 177:1 205:21	126:8 127:10,17
kahn's 203:14	108:9 109:21	241:2 242:8 250:11	128:5 130:23 132:9
keep 89:23 132:2	111:10 113:22	known 60:20 61:1	133:1 134:4,21
142:13 166:8 169:1	121:15 122:2,3	kopp 180:7,10	135:16 136:8
207:6 219:10 231:9	123:9,23 124:5	korea 111:4 116:18	137:24 138:20
kept 34:6 177:11	126:2 127:5,15,24	l	139:6,18,22 140:18
198:2	128:18,20 130:2	l 8:2	142:11,17 145:17
key 16:4 28:14	131:10 135:19	labeled 169:16	146:10 147:2,4
147:17 152:10	136:12 137:5	208:18	149:12 151:7
174:2,4 237:3	139:12 150:3,20	lack 73:18 75:25	152:18 157:25
kick 35:15	151:1 154:15,19	lacks 65:1 75:10	158:21 160:8,14
kind 72:4 79:4,11	155:5,21 158:24	84:22 108:21 119:6	161:7,18 162:2,13
99:4 131:24 163:25	159:3,9,20 160:20	127:17 128:5 134:5	163:3 168:19
170:2 206:3 220:11	160:21 161:2,24	138:2,20 139:18	169:24 176:11
241:1	163:9 164:8 166:3	149:12 161:7	181:6 182:1 184:3
kirby 6:6	168:22 169:22	181:13 182:1	188:3 191:11,23
kirkland 6:15	170:5 172:7 173:3	191:23 199:6,13,21	192:5,12,25 193:25
239:14	175:8,11 176:25	200:5,17 201:8,17	194:13,22 195:12
kirkland.com 6:19	177:4,4,8,14 178:1	221:3,24 245:18	196:6 199:6,13,21
kmllp.com 6:10	180:7,9,10 183:6	247:10	200:2,5,17 201:8,17
knew 48:16 129:16	184:24 185:1,24	lag 137:9 236:10,18	204:19 205:9
232:16 238:5	188:17,19,23 189:7	lahad 3:4 8:11 10:4	207:22 211:6,22
240:25	189:15 190:5,8	10:5 12:2,4 18:11	217:8 218:5,14
know 11:10 14:11	192:6 193:21	21:1 22:6,16,21	221:3,23 223:22
19:19,20,23 20:1,11	197:11,14 199:8,15	27:15 35:13 42:24	224:22 226:20
21:2,12,19 22:2	199:17,20 201:10	44:15 46:24 48:25	228:11 229:12
23:14 25:1 32:15,16	201:24 202:23,25	49:14,19 50:9 53:3	231:2 232:24
32:20 33:25 36:9,18	203:3 204:11	53:14 54:16,22	233:23 234:4,17,22
37:11,13,19 38:19	208:18,23 214:19	55:24 58:2,20 61:6	235:4,14 236:12,21
38:20,23 39:2,3,18	215:2 216:2,23	62:18 63:11,13	240:2,4 242:17,19
39:19 40:6,11 41:5	219:9,24 222:4	64:15 65:1,20 66:2	244:2,12 245:5,18
41:15 45:24 46:10	223:18 224:2	66:4,21 67:24 68:1	246:18 247:10,12
48:15 54:23 56:18	226:13,23 232:1,18	68:11 69:17,25	247:20 248:10,21
56:19,22 57:5,6,8	232:25 235:10	70:17 72:17 73:18	249:5 252:7,9,23
57:11,15 58:3,21	237:21 238:23	75:10,25 76:23 77:5	253:3,13,21 255:16
59:24 60:17,22 61:5	242:20,22 243:20	78:12,14 79:21	255:17 259:1
61:16,23 65:2,21	249:25 250:25	81:13 82:24 84:22	large 113:15,19
68:24,24,25 73:16	251:4 253:10	87:20 90:15 93:23	165:5 172:2 193:19

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

[larger - logical]

Page 21

larger	30:18,19,19 222:20 235:8	134:24 162:18 173:19 176:2	94:1 96:4,6 97:3,16 97:24 98:23 102:11	250:23 253:18 lincoln
largest	30:9 54:5 152:22 188:18	184:20 189:20 190:14,15 204:25	102:13 103:5,21 105:16,20,25	7:22 line
late	94:21	205:2 206:1 208:3 218:2 229:5 256:11	106:23 107:7,19 108:3,15 109:3,24	45:6 97:12 110:25 181:9 184:5 189:2 207:20
laughing	125:5	leveled	110:8 112:4 114:13	lined
laura	3:13	levels	115:25 116:2 117:9	lines
laura.lin	3:19	leverage	117:10 119:8	lineup
law	2:7 227:12	54:12 55:6 134:10 134:18	121:14,23 122:10 122:23 123:1	lineups
laws	161:16	levers	124:17 125:7,23	liquid
lawsuit	197:12	lg	126:9,24 127:3,14	liquidated
lazy	99:23	61:11 69:3,9,14 90:2 253:17,20	127:23 128:12,15 130:13 131:6 132:4	liquidating
led	10:15 12:12,15 13:19 58:9 142:2,3 194:17 195:9,15,20 196:14,20,23 197:18	liable	132:15 133:3,15,24	13:13 14:6
lde	194:20	lieu	134:16 135:7,20	liquidation
lend	17:3 145:24 258:16	life	136:3,20 137:12,14	list
leader	159:12 170:15,21,24 171:15 172:3,6 173:18 175:19 176:2	136:19 187:8,9 232:4	138:8 139:2,13,20 140:13 141:11	242:10 112:17,18 203:12 214:4
leaders	159:10,22 160:2 172:11	lighter	142:13,15,21	listed
learn	135:8 174:20 174:25 188:10	llking	143:24 145:22	20:24 21:6 23:15 177:22 179:1
learned	54:12 197:11	limited	146:15,23 147:6,7 100:19 218:22	listen
learning	43:7,8 135:14 136:4	lin	150:2 151:10 153:10 154:4,7,14	listening
leave	92:1	12:3,8,9,21 13:1 17:20 18:12 21:4	158:2,3 159:5	listing
led	207:18	22:12,15,18,22,24 22:25 27:19 32:24	160:11,17 161:3,13	literally
left	25:5 155:19 224:23 256:2	35:16 40:22 44:20 47:4 49:6,17,22	161:23 162:6,24 163:5 167:19 168:2	litigation
leftovers	187:13	50:4,17,25 51:6,12 51:19 53:11,18,23	168:21,25 169:3,14 169:17,25 170:1	14:9 227:14
lessen	129:23	54:18 55:7 56:1,10	176:14,16 181:15	little
letter	82:8 109:23 141:24	56:11 58:4,22 60:16 61:8,18 62:7,22	182:5 184:10	30:3 35:8 77:25 96:4,17 112:19 153:15,18 155:18 224:20 251:5 252:5 254:9 255:12
level	18:10,16,17 19:18 32:8,9 41:22 45:17 119:19 120:7 120:8 129:15 134:7	63:12,17 64:3,21 65:4,23 66:3,15,23	186:18,21 188:6,8 191:12,14,25 192:8 192:14 193:4 194:9	live
		66:25 67:19 68:3,16	194:16 195:5 196:1	3:5,14 4:5,14 5:6 5:15 6:6,15 7:4
		68:19 69:22 70:11	196:11,25 197:10	located
		70:24 73:2,14,24	197:24 198:7,10	16:17 21:20 22:4 25:11 26:13 40:8,13 41:3 43:4
		74:7,9 75:18 76:3 77:2,6,7,17 78:7,13	199:9,16,23 200:4	115:17 181:1 188:21 257:6
		78:16,18 80:2 81:19	200:12,25 201:12	location
		83:1 85:5 88:1 91:3	201:23 202:3 204:23 238:25	25:12,14,22 25:24 26:9,13 188:21
			239:6,10,16 240:22	locations
			242:5 244:10	100:24
				logical

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

[long - margins]

Page 22

long 19:23 28:10 30:4 33:6 51:25 78:4 96:13 104:6 107:16 112:3 155:7 179:3 224:12 251:5 255:10,13 longer 19:5 52:5 94:20 96:5 151:4 255:21 look 28:20 37:23 97:13 111:21,24 123:8 166:20 172:5 198:13 205:2 206:18 217:24 225:12 226:11 244:9 looked 21:24 60:1 92:14 97:10 136:7 177:25 255:2 looking 33:9 44:6 45:8 48:8 50:14 57:1 69:11 73:15 154:11,18 176:1 177:19 184:22 209:17 216:21 217:15 218:23 244:22 246:5 looks 132:2 177:16 181:8 194:7 256:3 lose 107:16 losing 87:14 156:8,9 156:25 loss 133:13 159:10 159:12,21 160:2 246:1 lost 41:24 133:13 lot 19:25 34:8 49:5 64:19 80:10 81:17 86:8,15 120:3 224:23 235:17 lots 77:13 84:14 218:15 loud 109:10 louisiana 3:6	low 47:9 57:20,25 58:24 154:19,20 155:5,9,12,15 162:7 162:10,11,12 224:19 225:6,7 246:7 lower 45:22 59:6,16 63:9,11,12,20 66:1 66:18 67:4,22 79:13 86:20 121:7 153:17 153:19 156:5 157:23 158:15 160:4 167:25 177:5 183:24 184:13 185:3 186:3 194:5 196:20 200:22 205:18 233:14 249:3,4,24 lowered 85:8,10 208:5 lowering 207:19 lowest 46:7 47:7 64:10 185:15 lunch 55:25 57:19 62:8 lying 175:8 m m 7:3 machine 218:20 magnavox 47:25 82:22,24,25 mail 189:21 maintain 71:18 101:16 109:4,7 118:14 maintaining 76:20 major 38:15,18 45:12 244:23 253:10 majority 101:8 113:6,9 149:22 182:18 206:25 232:13	makers 258:12 making 35:17 60:5 61:19 79:14 118:19 257:4 malaise 7:3 manage 24:7 managed 24:5 35:7 113:12 management 15:8 98:3 129:4,16 130:1 152:9 177:3 180:17 206:13 management's 177:1 manager 15:4,7 16:8,25 18:25 19:3 19:4,10 20:16 24:7 24:10,15,16,18 69:3 106:7,8,9 114:6 120:13,14,15 123:19 147:13 154:15 166:6 170:22,22 172:12 172:13,14 176:24 177:3,14 manager's 18:20 154:8 155:24 156:23 managers 29:10,11 119:21 177:7 178:22,24 209:11 managing 17:4 66:8 207:4 manner 243:3 manufacture 80:11 manufactured 41:6 59:24 60:9,19,24 61:3,17 67:13 70:4 111:13 144:18 202:24 203:1,2,4 254:17 manufacturer 39:4 55:14 64:24 70:20 71:8 117:3 246:8	manufacturer's 67:17 71:23 72:21 85:1,7,9 86:11 117:23 141:15 143:9 162:20 182:20 208:8,12 246:17 247:7,9 250:4,16 251:19 254:15 256:4 manufacturers 39:1 39:6,10 40:11 41:3 42:23 47:21 54:21 57:13 63:10 70:7,13 93:25 117:7 135:9 135:14 136:5 199:4 199:18 201:16 236:4 237:1 249:20 258:17 manufacturing 42:20 61:14 93:21 135:9,23 136:6,13 march 22:10,19 35:5 margin 72:15,19,20 72:24 76:20 87:10 118:3,6,10,18,23 119:1,4,9 120:10,20 122:5,8,9,12 124:21 124:25 127:7,16,20 133:9,13 138:4,25 141:3 143:15 144:1 155:19 162:22 248:18 margins 71:18 97:14 118:1,9 119:24 120:7 121:11,12,13,16,17 121:21 122:1 125:11,25 126:6,13 127:20,21,21,22,25 132:19 139:5 143:25 205:22 206:1,11 232:19 248:8,14 249:2
---	--	---	--

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

[mark - misstates]

Page 23

mark 12:21 74:7 105:20 122:23 126:25 128:13 137:12 154:4 169:14 186:19 198:7 219:18 239:2	markup 93:6 marriage 260:14 mart 37:23 164:23 165:7 166:12 mass 150:12 master 82:7 86:8 99:7,14,20 100:1	192:19 194:18 195:24 196:12 204:10 221:12 224:6 231:3 232:25 meaning 36:13 45:11 46:15 95:9 229:3 233:24 254:14	mention 229:17 mentioned 28:6 29:7 52:8 74:15 83:2 202:18 203:9 204:13 213:14 220:2 227:17
marked 11:16 12:19 68:14,17 74:5 105:18 122:21 126:22 128:10 137:10 154:2 169:12 186:16 198:5 208:14,17 219:16,19 239:4,7	match 35:4,6 37:6 154:23 185:21 216:13 223:3,6,9 225:4 230:6 237:5,9	meaningful 63:6 means 27:22 47:7 51:22 73:23 76:22 109:16,20 116:4 127:5,12 155:22 157:19 172:8 174:1	merchandise 20:16 24:14,18 106:7,8 120:13,14,15 166:1 170:22
market 19:3 36:25 37:6,7,17,18,24 38:17 51:17 52:8,12 52:13 53:9,13 54:2 54:19 89:13,19 92:19 110:22 131:23 132:7 163:2 163:11,12,16,22 164:5,6,7,11 165:4 165:7 170:15,17,21 170:21,24 171:15 171:21,22,22,24,25 172:3,6,11 173:18 173:18,21 175:19 176:2,2,4,10 183:24 184:13,23 185:3 192:2,9 207:10,11 211:8,8 213:2 220:12,13,14 221:8 221:17 223:14,15	matilla 208:22,23,25 matter 44:11 150:12 234:13 260:15	math 143:15 matilla 208:22,23,25 matter 44:11 150:12 234:13 260:15	merchandising 16:5 18:8 23:22 24:2,16 27:10 119:14,22 124:5 128:24 152:10 166:21 224:10
marketing 93:8 marketplace 54:5 72:3 89:23 130:11 130:15 140:22 148:9 164:25 176:19 250:7	mdl 1:5 mdp 163:18	meant 73:16 79:6 116:5 145:5,11 180:21 191:11 254:10	merchandize 106:9 merchant 48:7 128:25
marketplaces 156:2 markets 16:1,1 224:15	mean 14:22 21:2 27:17 34:12 40:24 41:24 47:6 51:21 65:21 66:22 68:13 75:23 76:14 79:22 80:17 81:21 84:25	measured 30:7 118:21 meet 50:5 65:8,12 75:8 98:11 113:10 115:13 130:2 233:21 234:2,9 256:10	merchants 16:6 223:14
marking 169:15	meeting 33:24 109:18 113:2 129:17,21 198:14 198:15,16 201:7 244:20 258:12,17	meetings 112:15 114:18 129:18 193:14	met 12:13
	memes 129:2 melissa 5:5 melissa.whitehead 158:5 159:12	meets 129:2 melissa 5:5 melissa.whitehead 5:11	michael 6:14 239:13 michael.gawley 6:19
	172:13,18 173:25 174:11 178:8 179:20 181:22	memo 201:5 257:24 memory 8:15 19:25 98:4	middle 75:1
	182:16 187:17,23 187:25 189:24,25	memos 220:2 139:6,18 147:2 151:7 157:25	million 163:23 230:16,16

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

[missates - number]

Page 24

194:13 207:22	motivation 50:13	205:17	neither 163:19
221:23 223:22	move 140:17 143:17	needs 42:12,16	net 19:2
245:6	moved 48:9 143:20	121:7 134:25 177:3	never 39:18 60:7
mistaken 30:10	199:11	178:15,16 186:9	91:14 159:17
139:24	moves 87:22	196:17	226:21
mitsubishi 5:20	mpd 163:7	negotiate 43:17 44:3	new 4:7,16 6:8 43:7
101:9,11 239:18	msrp 249:21,23	44:12 51:17 53:7	43:8 87:24 112:11
model 75:2,13,24	250:3,9,14,22 251:7	62:15,23 63:3,9,20	112:23 118:16
81:1 164:5 173:5,7	251:12,16 254:14	64:6 66:1,13,18	136:24 137:8
173:11 228:25,25	mto.com 3:19	67:4,22 71:18 81:10	144:20 147:15
229:2,2	multiple 91:22	85:15 88:2,8,25	238:6 251:23 254:2
model's 76:6	munger 3:14	89:2,6,12 90:11	newspaper 172:1
models 75:21 80:23	n	109:2 111:25 121:5	nimechek 68:24
90:17 91:1,5,7	n 3:2 4:2 5:2 6:2 7:1	negotiated 41:2,10	69:1
232:22 233:14,20	8:2,2 9:1 32:20,22	51:1,2,8 68:6,9	nodded 66:4
moment 107:5 123:3	name 9:17 38:18	76:21 78:20 82:6	nodding 11:6
157:7	48:15 171:16 180:7	85:16,20,23 89:5,16	non 67:8 92:5 94:13
monday 179:15	180:9 198:18	90:16 91:11 95:6	96:7 124:12 135:24
money 52:22 79:14	202:13 227:11	105:11 233:3	175:7 229:18 230:6
79:15 83:5 84:8	249:17	negotiating 17:3	230:14,25 231:16
87:14 114:10	named 23:1 208:21	27:3 43:15 49:8,24	232:9 255:4
130:12 144:13	names 20:9 38:8	50:18 52:24 54:14	normal 46:4 145:3
229:21 230:4	147:12 212:17	54:20 65:18 71:16	221:16 223:7,12
231:24,24	national 9:19 15:13	75:6 88:6,24 89:14	230:18
monitor 153:13	17:1,2 18:10,15,16	91:5,20,22 92:8	north 2:8 5:16 9:21
168:18,23 192:19	19:13,18,20 20:6	121:6 193:23	227:20 228:4,7,23
206:15 243:16	28:15 69:2 114:6	195:10	229:17 230:6,25
monitored 165:17	116:19 123:18	negotiation 50:20	231:7,15 232:7,20
monitoring 165:13	243:4	51:13 62:9 66:6	233:13,21,22 234:9
165:23 205:7	nationally 166:14	91:7,19 112:3	northern 1:2
monitors 15:6,19	nature 85:14	135:15 195:23	northwest 7:5,13
25:4,21 30:3,5	necessarily 37:25	228:23,25 255:10	notary 2:12 259:23
32:17 33:1 58:13	137:7 200:24 233:7	255:13	260:5
249:19	necessary 226:16	negotiations 16:23	note 212:22
month 40:2,3	need 41:21 42:13	40:15 43:10 44:25	notified 238:3
231:19	61:16 75:3 90:7	49:9 50:1,8 71:7	november 22:10,19
monthly 178:4,5	91:18 121:2 123:8	86:4 88:4,23 89:3	187:3 208:22
months 35:9 187:16	128:18 138:16	102:19 110:4,14	239:23 240:13
251:25 255:20	139:12 140:10	111:16 112:5	241:7 242:14
moore 20:20	166:2 170:13 175:8	115:16 116:8	number 1:4 29:17
moring 7:12	196:20 205:17	120:21 122:4	34:12 57:12 73:6,12
morning 9:11 10:9	219:22 238:6 258:1	135:10 193:23	74:8 91:5 107:14
10:10,24 58:12	needed 36:14 99:22	195:6 205:7 229:16	109:9 122:24
motions 66:3	116:13 127:8 186:8	242:4 257:2	133:19 153:8
			155:18 173:11,16

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

[number - panasonic]

Page 25

197:4,8 231:25 numbered 137:13 numbers 195:16 numeral 93:5 ny 4:7,16 6:8	objections 69:25 108:23 109:15 245:8 observing 214:25 obtain 53:13 134:19 206:5 obtained 216:9 obtaining 164:9 obvious 175:2 obviously 29:16 104:23 206:15 occasionally 79:20 80:1 occasions 64:9 occur 86:10 110:5 116:7 occurred 162:1,7,8 162:10 212:25 occurrence 250:1 odd 250:1 offer 83:22 156:5 215:21 228:8 256:12 offered 158:16 228:4,5 offering 46:7 134:8 153:11 158:8 193:2 230:20 offerings 134:19 office 15:5,5 25:8,8 111:24 256:9 offices 2:7 116:17 offset 75:4 133:12 246:1 248:2 oh 173:17 256:3 okay 12:24 22:21 111:10 142:22 185:21 198:23 239:11 245:11 old 118:22 olson 3:14 olv 210:6 omitted 12:2 once 17:2 31:17 33:18 53:7,24 72:5	163:11 184:14,16 185:7 219:25 231:17 256:19 overcome 175:9 overnight 188:13 overseas 110:11 owned 86:5 owning 81:17
		p p 3:2,2 4:2,2 5:2,2 6:2,2 7:1,1 9:1 119:16 p.m. 56:4,7,9 73:5,8 73:9,11 97:18,20,21 97:23 133:23 169:5 169:8,8,10 197:3,6 197:6,9 202:5,8,8 202:10 227:7 259:5 page 8:4,14 69:12 69:13 73:15 75:1,19 78:15 106:2,11 124:19 125:9 129:7 130:5,7 134:1 154:18 155:17 157:1,3,5 169:19 172:5 173:15 176:22 178:3,21 180:7,8 183:19 188:3 198:25 220:20 222:13 244:22 pages 123:4,6 178:2 183:19 paid 51:22 87:13 97:11 155:3 159:18 palumbo 198:19,21 201:1,5 258:11 panasonic 4:19 57:3 57:4,4,7 59:13 99:1 99:1 106:17,21 107:11 108:5,17 227:13,20 228:4,7 228:23 229:16 230:3,5,25 231:7,15

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

[panasonic - point]

Page 26

231:22 232:7,20 233:12,21,22 234:8 252:20 paper 129:5,13 198:11 248:12 paragraph 157:6,10 239:24 240:11 242:23,25 parameters 29:1 park 4:15 parking 114:22 part 12:2,3,4 13:18 23:5 42:22 46:4 61:20 81:11 86:14 88:4 89:1,3,13 90:6 105:13 108:16 109:22 119:20 131:21 135:15 152:22 180:4 184:5 193:22 201:6 209:7 225:10 228:16 232:3,10,11 242:3 participants 241:20 particular 24:1 37:13,15 57:16 72:15 77:18 80:22 89:22 104:14 145:14,23 146:6 147:9 171:3 206:9 229:8 234:9 250:9 251:17 particularly 104:11 112:23 156:9 165:3 parties 14:9 260:13 partner 104:5 partnership 124:21 125:1 parts 181:23 party 14:11 55:23 126:10 163:1,6 164:10 253:8 paul 68:25 69:7,8 pay 52:4 75:14,15 88:8 92:1 114:15,19	paying 96:19 114:10 193:22 206:19 payment 51:16,20 51:25 52:5 payments 94:11 95:5 peachtree 5:7 peak 21:17 pending 11:11 pennsylvania 7:5,13 people 20:1,4,6 29:10 66:8 68:20 74:1,10 80:19 84:13 100:21 104:25 106:1,4 109:1 113:16,17,19,20,23 114:10,24 115:20 116:12,16,24 131:14 134:14 140:21 165:17,22 166:5,18 168:11,12 175:7,24 177:15 180:24 185:24 186:23 188:19 189:5 209:6,11 212:9 218:16,19 220:16,17 256:17 257:3 people's 168:9 percent 33:25 34:1 36:25 37:1,24 38:1 148:7 149:24 155:4 163:21 164:6,7 201:2,13 207:1 percentage 21:20 22:2 37:6 61:25 83:17 94:23 144:2 228:8 230:10,22 performance 34:5 period 15:12,14 16:21 17:10,13 18:3 19:23 20:5,15,21 21:13,16,19 22:3,9 22:20 23:3,9,21 24:8 25:17 26:2,13	28:10 29:6,20,24 30:13,17,20 32:1,21 33:12 35:3 38:12,22 42:14 47:23 48:2 56:17,21,24 57:25 58:7 59:17,19 66:10 78:4 80:3,7,9 82:9 83:6,25 85:4,13 86:7,14 89:8 91:13 94:14 95:18,22 100:5 101:18 103:14 110:7,9 115:4 119:2 120:16 121:15,24 136:22 149:22 151:13 155:7,16 159:11 162:1,3,4,5 164:19 164:22 165:8 168:15,20 170:16 176:13 184:8 185:19 189:17 192:1 197:25 212:12 224:12 232:10,11,14 237:9 243:1,8,15 249:9,23 251:16 252:13 periods 150:18,20 168:7 204:3 216:25 person 102:24 111:16 126:18 160:19 170:20 171:13,17 175:6 211:23 215:23 217:21,24 225:18 238:2 personal 12:17 82:20 201:20 240:16 personally 52:6 158:22 personnel 244:21 persuade 54:1 phillips 7:9 57:9,9 74:23 75:8 199:2 253:23 258:7	phone 5:3 6:3 7:2 111:17 115:19 226:9 238:14 252:5 phrase 174:8 physically 16:17 233:18 pick 114:21,21 226:8 picture 60:5 piece 58:19 248:11 pieces 28:20 90:3,4 90:5 116:24 122:16 pierre 3:4 pipe 240:6,9 pitch 117:13 place 81:25 99:15,20 110:22 155:6,12 170:3 places 102:6 plaintiffs 5:12 6:11 53:19 plan 90:24 118:4 planned 138:15 139:14 196:13,15 planning 34:21 119:15 plans 34:19 119:22 plasma 192:18,22 193:5,14,16,22 194:5,24 195:8 196:3,9,20 play 217:16 playing 36:14 38:2 45:17 109:13 plc 2:8 please 9:24 11:9 48:19 62:21 123:9 128:18 138:14 239:24 242:22 258:4 plus 155:4 pocket 218:18 point 17:15 19:21 20:22 32:16 36:18 46:14 47:2,5,11,13
---	---	--	---

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

[point - prices]

Page 27

47:18,21,25 48:18	possible 58:10 60:3	previously 11:16	162:19,20 164:3
48:23 49:4 59:17	112:9 185:9 199:10	17:9 23:7 176:2	166:14 172:24
61:2 69:2 71:15,17	207:6 256:24	188:16 198:12	175:15 176:4,6
71:19 84:7,8 85:24	possibly 49:2	price 16:4 27:13,18	178:13,21,23 179:6
89:11 101:6,7,13	potential 226:16	27:20,22,24 28:2,4	182:17,17,19,19,21
107:14 109:9 130:6	potentially 138:16	28:7 33:10 36:18,20	182:22,23 183:1,3,4
162:9 183:9 185:1	power 54:14	41:11 43:18,18 46:7	183:5,5,6,8,10,12,13
195:1,10 200:22,23	practically 189:15	46:14,19,22 47:1,5	183:13,14,25
234:2,4,10 246:5	189:19	47:7,11,12,13,13,18	184:13,21 185:4,10
248:4,22 256:14,17	practice 26:25	47:21,25 48:23 59:2	185:15 187:19,20
256:21 257:4,23	158:19 226:24	59:11,18 61:25	187:22,23,24 188:1
258:1,15	245:3,15	64:10,10,13 65:8	188:9 190:18
points 24:13 59:11	precisely 188:20	66:18,21 67:13,14	191:18 195:1,1,20
59:18 86:2 118:23	predetermined 28:3	67:17,20 70:7,21	195:22 198:3
122:18,20 195:2	28:7	71:4,4,5,12,13,15,17	199:19 201:2,14
233:20,24 244:23	predicts 210:15	71:19,23,25 72:8,10	205:7,16 206:22,24
248:14,15	predominantly	72:21,22 75:9,13	207:19 208:3,4,7,9
policies 117:15,25	25:10 31:15 172:2	76:6 77:16 79:7	208:11,13 210:5,13
182:7,9 204:2,4,13	prefer 103:6,10	80:8 81:2,5,6,10,15	210:16,22 211:5,25
204:16 212:4 223:9	133:4	81:24 82:4,10,14,18	213:4 214:13
policy 117:22	preferred 100:6	82:23 83:17,18	216:13 223:2,9,17
121:25 150:4	premium 59:20	84:11,15,19 85:1,8	224:19 225:5,6,6,7
181:25 185:15	preparation 198:14	85:10,11,11,19,23	225:8,9,11,13,16
203:24 214:19	244:20	86:3,8,12,17 87:6	226:8,9,23 229:18
226:24	prepare 12:10 13:10	87:17,21 89:9 92:6	230:6,25 231:3,3
pool 124:10	prepared 13:2	94:24 104:23	233:13,14,19,24
poorly 220:14,15	244:17	110:17,22 111:13	234:2,4,15 235:22
popular 196:24	presence 41:10	112:17,18 117:20	236:5,9,11,18 237:2
portable 32:4	present 36:2 60:22	117:21,22,24 118:6	237:11,13,20,24
portion 129:9	119:21 254:2	131:16,18,20 132:7	238:3,7,8,20 243:2
portions 219:24	presentations 33:19	134:7 141:14,16	246:17 247:8,17
posing 217:9	35:20,21 254:6	143:6,9,10,11,13,18	248:14,15,22 250:5
position 15:17 26:4	presented 54:10	144:5,6,11,17	250:5,17,18 251:19
26:16 30:22 54:20	president 24:15	145:13,24 146:6,16	254:16,17 256:4
74:16 131:17	113:24 114:2	146:21,24 147:1,8	258:23
132:12 170:25	119:22 128:23	147:15,15 148:4,4,9	priced 79:8 92:5
171:3,10,17,18	206:14	148:10 149:4,11	118:7 153:2 156:6
209:1 246:13 247:5	pretty 30:5 39:13	151:2,20,21 152:17	162:16 200:22,23
positioned 132:6	129:6 216:17	153:5 154:9,16,19	prices 27:6 28:24
positioning 247:3	prevailing 183:24	154:20,25 155:4,5,9	43:15,17 49:10,14
positions 13:3 14:17	184:13 185:3	155:12,15,20,22	49:16 66:17,19 77:4
14:25 18:19,23 19:2	previous 14:14 22:8	156:3,4,5,6,19	77:5 78:8,10,12
19:4,5,7,17 23:11	135:17 141:24	157:22,24 158:9,10	79:19,21,22 117:16
124:3 155:25	142:1 198:15	158:11,12,15 160:4	118:2 131:8 133:5
165:12	221:23	160:20 162:17,17	134:20 135:15,18

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

[prices - product]

Page 28

139:17 140:17	207:3,6,7 208:2	processed 188:13	82:1,5,13,17,21
142:5,11,13,18	211:3,10 214:24	processes 164:12,14	83:6 84:12,13,18,21
144:22 145:25	218:21 220:20	procurement 33:1	84:25 86:11,20,23
146:8,18 148:12,24	222:24 231:6	36:24 231:5,9	87:12,23,25 88:7,23
150:8,16,22 151:5,9	244:24 245:15,16	234:14 235:24	89:7,14,20 90:9,12
151:16 152:5,17	246:8	236:11,17	91:11 92:2,3,9 94:6
153:13 157:12,13	primarily 43:9 49:9	produce 132:19	94:24 95:6,11,15,17
158:5,8 159:6 161:4	49:11 54:4 59:18	produced 105:23	95:24,24 96:9,11,24
161:25 162:10	156:17 204:10	170:5 188:7	97:6,10,11 98:14,22
165:18,23 166:9,10	primary 46:17	product 15:4,24	99:5,22,25 101:22
166:24 167:24,25	49:25 50:13,13	16:12,13,14 17:4	102:4,16 103:7,13
168:18,23 172:24	71:20 143:10	18:20,25 20:25	103:23 104:2,9,10
173:21 174:6	209:21	23:16,17 24:3,11,13	104:20,21 105:8,10
175:12,21 176:9,9	print 151:21	24:22,24,25 27:3,14	105:12 108:19
176:18,18,21 177:9	prior 31:25 94:19	27:21,25 28:1,5	109:5 110:5,12,15
177:13 179:20,21	99:2 120:4 130:25	30:8 31:9,9,22 34:8	111:21,24 112:1,11
180:4,5 181:4	136:11 242:9	34:17,21 35:10,18	114:9,14 115:10,14
182:11 183:20,24	priority 133:7,7	36:2,10,12,20 37:23	115:15 116:21
184:13,19 185:3	probable 60:3	38:2 39:5 41:6,13	117:3,11,23 118:7
186:4 188:11	probably 19:25	42:14 43:7,8,25	120:19,22,25 121:6
190:22 191:3,8,13	21:17 29:21 34:1	44:9,14,19,21 45:9	121:18,20 122:1,6
191:15 195:9,15	91:1 93:3 94:16	45:11 46:2,8,18	122:12,18 128:8
196:2,3 198:1 199:3	137:19 145:6	47:2,6,8,8,9,17,18	130:16,18 131:13
199:5,11,12 200:15	152:23 153:24	47:20,24,25 48:22	131:17 132:3,17,24
200:16 201:16,25	167:12 187:4 190:3	49:9,25 50:12,15,16	133:8,11 134:9,10
207:5 212:15,23	195:17 203:16	50:19,21 51:3,9	134:12,18,20,24
243:10,16 244:1,25	211:11	52:13,14,15,17,19	135:4,6,9,14 136:5
258:8,13,18	procedures 33:1,3	53:6,7 54:1,8,11,13	138:5,7,23 139:4,9
pricing 70:5,14 71:1	36:24	54:15,21 55:2,13,16	139:15,15 140:4,16
73:17 74:2 83:22	proceedings 73:7	56:19 58:9,14,15,18	140:23 141:2,12,14
118:4 130:16	97:20 169:7 197:5	58:25 59:5,11,21,25	142:3,5 143:12,20
132:13 144:7,22	202:7	60:4,10 61:3,13,16	144:3 145:12,14,23
145:1 148:15,20,22	process 28:9,12	61:21 62:10,17,25	146:7,17,20,21,24
152:1,2,6,13 154:24	34:10 43:14 44:2,6	63:4,10,21 64:7,11	147:1,9,13,13,22
156:24 158:9	44:8 45:2,4,20 46:7	64:14,19,20,23,24	149:11,18 150:5,9
166:11,20 169:18	46:10 48:2,5,6,12	65:7,14,19 66:16	150:13,22 151:5,18
169:22 170:2,8,11	48:21 49:7,23 53:5	67:1,3,5,12,18,21,23	153:16 154:24
171:2,4,6,10,12,19	53:5 82:6 98:1,6,9	68:6,10 69:15 70:13	155:1,2 156:17,20
172:4 177:23 178:3	99:4,12 119:20	70:16 71:1,8,9,11	157:20 160:23
178:9,11 179:2	135:15 147:10	71:21 72:3,15,16,24	162:16 163:2,16
182:6,9,14,24	149:14 169:19,22	72:25 73:17 74:21	164:6,11 165:4,14
184:17 186:6 187:2	170:2,8 175:19	75:7,8,24 76:7,21	166:7,16,17 167:9
187:4,5,6,9,14	183:1 212:13	77:4,15,19 78:9,25	174:6 185:9 186:7
188:15,16,23 189:9	256:25	79:3,10,17,19,19,24	186:12,13 187:8,9
193:12,14,15,16,20		80:20,22 81:7,8,11	187:10,11,17 191:3

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

[product - purchase]

Page 29

192:10 193:15,16	88:9,11,15,19 90:13	161:11 184:15	proposing 256:23
193:17,20 194:5,6	91:9,12,14,17,21,22	210:18 245:17,23	protected 86:13
194:12 195:7,15,19	92:1 98:2 99:16,20	247:17	protecting 87:7,8,9
195:20 196:7,8,10	100:7,10 101:2,3,5	profitable 95:15	87:11,15,19
196:13,15,16,18,23	101:17,24 102:2,7,9	128:9 140:6,8	protection 81:3,5,6
200:15,22,23	102:10,11,19 110:6	144:14	81:11,15,25 82:4,10
202:23,23,25 203:2	112:8,10 113:1	profits 131:3,4	82:14,19,23 85:11
203:5 205:8 208:2	117:5,13 119:2	132:25 210:22	85:11,19,23 86:3,9
208:10 209:10	122:5,14,16 124:11	245:1,3 246:2	86:17 87:7,10,17,21
211:24,25 214:8,8	127:25 132:6,8	247:24	92:7 144:17
215:12,14 218:7	133:5 134:7 136:23	program 55:19 99:2	provide 14:5 36:15
224:1 225:12,23	136:25 143:2,6	106:20 127:6,13	52:21 54:2 60:15
226:4 232:4,8 233:5	144:23 145:15	154:9,11,12,16	82:14,18 110:1
233:9,17 234:14,16	146:1,4,8,18 148:14	155:6,9,11,12,15,24	122:8,11 126:14
235:7,23 244:1	148:24,25 150:8,16	172:19,20,21	163:1,15,22 170:11
246:12,14 247:5,25	151:18 152:4,5,16	183:17 229:3	provided 14:8 19:24
251:17,23,25	153:18 159:7,10,18	231:17	52:13 62:16,25
252:12,17 254:11	159:21 160:1,4,5,9	programs 12:5	82:22 83:5 93:12
254:19 255:3,3,14	160:10,12,19	81:15,21 125:12,25	122:5 219:7
255:20 257:14,15	168:20 171:11	164:17 227:18,20	psb 172:16,18 179:3
products 12:7 14:19	172:23 173:8,12	227:21,25 228:14	183:6,9,10,12,14,16
14:21,22 15:2,10,10	174:22 176:12	228:22	238:6,7
15:16,25 16:3,10	184:15 185:16	prohibit 161:17	ptv 106:17
17:9,17 18:9 19:14	186:3,4 191:8,16	204:16	public 67:11,20 79:8
19:18,21 21:7 23:11	192:3,23,24 193:5,6	projection 31:20	177:17 191:19
23:21,25 24:7,24	193:22,24 194:20	106:18 156:14	206:8 216:1,21
25:3,20 26:6,7,19	194:21 195:9,11	214:9	259:23 260:5
26:23 27:7 30:11,24	196:3,5,19,21 198:2	projections 156:12	publicly 224:4
31:8,17 33:5 34:13	202:19 205:23	promo 179:4,5	published 216:12
34:25 35:2 37:7	207:8 212:23 214:4	promoting 128:8	pull 139:14
38:9,13,21,25 39:1	232:19 243:4,17	promotion 216:4	pulling 138:15
39:9,11,17 40:8,13	244:24 245:15,23	promotional 127:9	purchase 17:6,8
41:2,18 43:16 44:4	246:9 247:3,6	128:4 180:1,3 183:2	23:20,24 26:6,18,22
45:2 46:11,21,23	249:22 251:15	215:20 216:16	30:24 33:5 35:10
47:13,14,22 48:5	254:3 258:19	227:18,20,21,24	37:16 38:24 39:5,16
50:7 52:5,25 55:9	profit 109:18 118:19	promotions 12:5	39:21,23 41:11,12
56:16,23 57:6,16,20	118:21 121:1,21,25	148:16	41:17,20 43:10
57:21,22 58:1,5,11	130:20 133:13	prompt 146:7	48:23 50:6,7 52:24
58:13,24 59:1,23	141:5 150:10	pronounced 208:24	54:1 55:8 56:16
60:18,24 61:24 63:8	172:10 185:9	proper 104:25	61:25 64:14 65:7,12
63:9,11,19 65:6,11	232:18 248:8 249:1	properly 237:20	75:6 85:17 88:4
66:1,19 70:14 74:18	profitability 87:12	proposals 233:13	89:3 91:7 96:9
77:14 78:1,11,20,22	87:16,19 96:11	proposed 108:17	98:10 99:19 102:18
79:2,25 80:4 85:17	104:21 119:23	120:1	104:16 105:8
85:21,25 86:5 88:3	126:21 153:16		135:10 136:22

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

[purchase - recommending]

Page 30

143:1 148:25 150:4 193:23 195:10 214:17 purchased 18:10,15 18:16 39:9 40:7,12 55:14 60:19 61:24 85:20,25 99:15 202:19,22 232:19 purchaser 6:11 purchases 17:4 20:25 23:16 24:3 27:1 34:17,24 39:13 40:16 41:2 42:5 43:15 49:9 50:19 64:7 81:12 92:9 99:5 115:10,16 117:17 120:21 purchasing 17:8 35:18 45:2 46:17,23 55:10 59:23 61:21 77:4,5,9 82:1 91:6 233:20 purely 200:9 214:21 purgatory 127:7 purpose 129:12 purposes 66:7 183:2 pursue 101:25 put 28:1 39:25 45:6 55:12 97:15 105:15 105:15 110:17 118:3 121:8 126:24 128:12 148:10 151:23 178:21 179:12 182:25 186:18 188:2,10 210:25 223:13 256:2 putting 144:1 178:23 185:9	quantities 37:17 quantity 50:6 query 120:5 question 11:11 21:10 26:20 49:14 53:5,22 54:25 60:1 60:25 62:20 63:24 69:23 77:13 103:19 108:11 112:21 130:25 136:11,11 139:20 142:8,14,18 146:13 160:8,15 170:4 200:2,4 211:13 245:12 246:14,23,24 questioning 96:3 questions 123:7 224:24 227:2,16 238:12,18 240:1,19 249:21 252:3 257:9 257:25 quick 22:6 196:25 238:18 quickly 22:1 219:18 244:9 quite 16:21 20:4,6 33:6 35:6 104:6 136:25 182:20 189:18 quote 94:22 225:23 quoted 44:22 64:10 135:1 quotes 44:13 quoting 45:18 194:6	raising 137:22 ran 151:22 167:5 180:19 random 224:11 range 58:5 rare 36:2,3,7 113:14 114:7,12 rated 96:11 rattle 20:3 29:21 ray 1:7 reach 36:4,8 71:16 react 28:16,22,24 45:23 140:22 166:10,22 167:12 174:2,5 176:5 179:20 190:16 206:24 217:2 reacted 212:19 reacting 28:17 29:6 212:13 reaction 139:11 152:1,5,11 153:13 156:7 179:6,14 190:2 204:7 207:2 208:5 212:20 221:8 221:15,18 225:19 231:23 232:5 reactions 151:2 189:22 190:6,9,17 reacts 223:16 read 40:20,21 69:22 69:24 73:22 107:5 109:9 123:5 127:2 128:20 133:25 135:13,21 138:9,12 142:8,10 157:6,8 167:17 183:21 198:24 219:22 243:6,7,7 258:2 259:9 reader 170:17 readily 217:6 218:3 reading 69:13 70:1 175:17 184:5 200:1 200:13	reads 210:3 real 22:6 158:8,10 158:12,15 realizing 160:23 really 72:2 96:18 112:10,19 118:20 125:4 181:14 204:10 239:2 reask 62:20 66:23 reason 108:16 143:10 159:25 170:6 184:16 214:12 224:16 230:11 reasonable 21:14 34:1 65:3 251:2 reasons 104:4 186:5 rebate 92:24 228:8 rebates 12:5 93:17 161:6 227:24 228:2 228:3 229:11 230:21 reboot 49:20 63:13 recall 29:18 30:15 31:21 32:12 38:11 62:12 101:1 103:12 115:22 118:25 141:18 162:25 171:9 227:19 229:9 244:15 252:13,16 254:7 255:10 257:11 recap 198:14 receipt 89:13 receive 71:19 90:8 90:13 94:8,25 95:3 157:24 209:23 received 93:21,24 94:18,22,23 210:4 recess 133:20 227:5 recognize 209:6 recognized 59:13,15 recollection 82:22 recommending 210:11
q qualification 98:1,9 99:4 quality 244:24 249:3,4	r r 3:2 4:2 5:2 6:2 7:1 9:1 240:4 radio 222:19 raise 9:24 75:3 106:25 161:24 162:10 208:3,4 210:12,22 258:7 raised 199:2,18 208:6		

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

[record - respect]

Page 31

record 9:2,4,10,12 10:4 11:2 22:8 40:21 49:21 56:5,9 63:14 66:4 69:24 73:6,13 97:17,19,23 133:19,23 142:10 169:6,11 181:6 197:4,9 202:4,6,11 206:8 218:12 227:4 227:8 259:10 260:9 recorded 119:9 recorder 218:17 recording 218:13 219:7 recordings 219:10 records 23:5 119:10 119:13 recourse 64:12 red 181:9,24 184:5 reduce 64:24 65:5 65:10,19 69:15 70:2 71:8 81:7 84:11 96:22 132:24 139:16 143:13,14 146:7 149:4 150:6 245:25 247:17,24 reduced 58:6 87:23 194:11 reduces 131:3 245:22,23 247:23 reducing 96:18 130:18 131:7 138:16 190:22 245:1,3,17 reduction 65:15 130:21 144:9,17 reductions 190:18 refer 14:21 17:21 36:12 43:18,18 45:10 64:8 93:3 229:19 reference 36:23 74:2 154:18 216:10 referenced 34:11 35:17 154:9 167:14	references 109:13 referring 17:22 109:12 142:2 151:25 170:9,10,18 170:20 refers 181:4 188:12 reflected 14:15,17 14:25 115:8 refund 155:2 refused 98:10 99:21 99:25 139:16 regarding 36:24 62:10 68:9 121:25 205:22 242:15 249:21 257:10 region 28:15 207:8 regional 18:2 164:25 203:9,13,18 regions 207:13,15 213:18 regular 157:12,18 209:20 reinforce 129:22 relate 23:11 related 14:18 15:18 16:9 17:7,16 19:17 21:7 23:15,17,20 25:3,20 26:5 33:1 56:17 57:9 68:5 115:8 117:15 118:1 147:23 171:10 251:13 260:12 relates 1:9 70:9 relationship 102:24 102:25 103:3,9,25 104:11,13,18 105:4 105:4 108:6 relationships 102:20 104:3 108:18 relative 229:23 248:19 relatively 235:7 249:2	released 216:17 releases 206:7 relevant 21:13,19 22:3,9,20 23:3,21 25:16 26:1,13 29:20 30:13,16 38:12,14 38:22 48:2 49:11 56:17,24 57:24 58:7 80:3 100:5 101:18 103:14 110:8 119:2 121:15,24 136:21 159:11 162:4 164:19 168:15,19 176:12 192:1 197:25 243:1,8,15 249:9,23 251:16 252:13 relied 34:16 relying 139:23 remain 70:15 remainder 155:23 remaining 85:13 243:10 remains 243:2 remember 13:3 20:10 35:5 37:2 48:17 57:22 150:25 180:9 229:13 251:9 remind 123:12 183:15 reminder 154:10,11 remove 217:23 renegotiate 79:2 232:9 rep 114:5 repeat 9:6 replaced 80:24 replayed 201:6 report 119:17,17 120:3,4 164:14 167:14,20 168:1 179:4,5 205:25 206:8 212:21 220:11 221:9,18 222:10	reported 2:9 reporter 9:3,18 11:2 32:19,23 40:19 69:22 124:13,15 135:25 136:2 142:8 205:11,13 reporting 171:15 201:5 212:20 220:9 reports 21:24 57:1 120:4,5 167:11 168:3,14 177:16 206:6,10,13,18 209:23 220:6 reposition 143:8,11 repositioned 67:12 86:11 represent 105:22 198:21 202:13 227:13 241:5 249:18 representative 115:19 representatives 102:21 112:25 113:10,12 114:15 115:13,15,16 117:2 244:18 256:8 represented 32:6 223:1 239:21 representing 217:17 246:6 247:2 represents 239:9,10 request 44:13 69:16 70:12 71:7 96:7 requested 36:1 65:8 65:13 75:9 76:10,14 76:15 77:1 81:14 required 152:11 requires 31:24 resale 23:25 resist 233:12 resources 224:18 respect 65:18 150:4 185:16 203:25
---	--	--	---

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

[respectively - sales]

Page 32

respectively	172:14	148:6,13 150:14	147:1 151:6 152:19	197:20 222:3
responding	190:22	153:12 162:20	158:1 160:13	231:11 234:7
response	69:16	168:23 182:10	161:15 162:14	238:13 239:25
	76:10 119:7 124:12	193:15 195:18	167:22 183:18	240:3,15,21 241:13
	135:24 138:10	200:20 203:8	188:12 190:19	241:16,22 242:3,18
	141:14 234:6 244:3	206:21 208:9,13	194:14 196:21	243:12,18 249:13
	246:20	214:24 218:4 236:4	210:1,23 211:17	252:4
responsibilities		236:11,18 237:2,23	213:7 216:19 220:3	row 78:2 172:6
	15:15,18 16:6,9,11	245:23 246:2 247:8	225:16 226:21	177:19 178:19
	16:24 18:18,24 19:6	247:22 250:4,17	234:24 252:7 255:6	214:13
	19:8 21:5,10 23:10	251:19 254:16,17	256:18	rule 82:11 84:25
	23:16,20 25:20 31:8	256:4	ripple 130:11	109:13
	178:4	retailer 157:23	risk 81:16 129:23	rules 10:25 28:16
responsibility	14:18	218:7	133:11 150:6,10	114:20
	15:1 16:20 17:16	retailers 131:4	risked 108:2	run 28:12 29:10
	19:14 23:15 24:3	151:20 157:11	risks 129:17	104:25 105:1
	25:3 26:5 32:9	245:2	roberson 123:16,17	179:13 214:2 224:8
	177:21 206:10	retailers's 157:17	123:20 124:20	running 216:3
responsible	15:20	return 256:7	125:9,17	s
	23:23,24 27:2,6	revamped 34:22	robert 6:5	s 2:10 3:2 4:2 5:2
	30:23 124:6 165:13	revealed 208:1	roberts 7:19 8:9	6:2 7:1,19 8:2 9:1
	165:23 166:1,2	revealing 197:16	238:15,15,17,24	135:22 260:5,24
	191:6 211:24	revenue 87:9	239:20 240:8,10,19	sabotage 213:21
rest	40:4 135:3	reverse 45:5 46:6	241:5,8,14,18,23	sale 12:6 27:25 28:2
	200:9 209:8,11	48:1,4,12,21 55:1	242:13,21 243:14	72:23 83:6,17 95:10
restate	53:21 71:20	79:12	243:22 244:4,13,14	117:18,19 118:2
	94:12 146:14	review 12:14 28:19	245:11,13 246:4,15	145:9 146:9 148:17
	231:13	177:22 206:10,12	246:21 247:15	148:18 156:22
restating	139:21	208:19 251:24	248:3,16,25 249:7	160:23 162:7,8,10
result	109:17 210:17	reviewed 12:12 78:5	249:11	162:12 167:5
results	205:6 229:24	78:9 231:19 252:1	robertson 123:15	174:14 178:19
resuming	73:8	reviewing 198:12	role 16:7,10,25 17:1	182:25 185:10
	97:21 169:8 197:6	revise 70:13	17:5,6,7 18:18,20	215:24 226:11,12
	202:8 227:5	rhyme 224:16	18:25 19:11 36:13	sales 18:9 23:17
retail	46:19 47:7	richmond 1:14 2:8	36:13 38:1 55:15	27:13 29:11 42:5,17
	67:13,14,17 70:5,7	9:22 16:17 25:15,25	166:23 172:6	42:19,23 43:3,12
	70:14,21 71:12,23	26:11,14 181:2	180:10 217:16	78:6 83:21 84:6,9
	72:21 79:6 85:1,7	188:22 257:6	roles 17:25 19:1,11	84:12 94:7,12 95:3
	85:10 94:24 110:17	rick 20:14 106:6	rolled 206:1	95:14 101:13,14
	110:22 111:13	rid 186:8	rolling 163:25	113:13 114:4 116:9
	117:23 118:19	right 9:24 13:24	roman 93:5	116:14,19,24
	130:19 133:8,11	18:2 44:24 48:9	room 113:20	117:16,17 121:18
	139:17 140:17	52:9 71:25 73:20	ross 3:3 22:17	121:20 122:1 124:9
	141:2,14,16 143:10	92:14 94:21 98:25	158:25 161:19	124:10 126:12
	144:5,19,20 147:23	124:15 145:11	167:18,21 169:2	

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

[sales - serve]

Page 33

131:15 132:20	171:15 172:11	189:22 190:10	186:10,14 187:21
133:12 149:5	173:21 178:5,21	193:1 201:1 210:9	195:19,20 196:14
150:15 153:14	181:17 185:8	210:13,18 212:5,9	196:15 204:12
156:8,25 161:17,25	200:19 201:1 214:7	212:18,22,24	208:9 215:13,16
163:23 166:1 173:1	225:22 246:11	220:22 226:13	228:17 231:20
177:9 178:22,24,25	247:4 256:15	229:24 232:12	254:12,21 256:23
185:5,6,11 186:2	sc 1:4	240:11,13 255:20	selling 32:13,14,17
192:10 196:2	scale 235:3	seeing 40:17 43:7	36:21 37:8 47:25
217:13 220:14,15	scenario 162:14	114:9	71:9 79:10 80:9,10
221:21 231:24	scenes 129:1	seek 89:19 194:10	80:20 86:20,22,24
232:13,16,16 246:1	scholclapper 20:18	seeking 136:23	87:1,4 92:13 116:22
248:1 255:1,5 256:9	106:5,13,24 107:15	seen 11:16 54:9,11	117:13 122:13
salespeople 94:18	107:21 109:12	79:19 112:17	132:3,23 139:9
124:9 175:5	127:5 137:18	197:18,22 203:2	143:11 144:6,10,12
sample 86:18,19	138:18	207:17 220:6 223:2	146:1,5,20 148:3
145:10	schoelclapper's	244:6 255:19	157:21 159:7 160:3
samsung 59:13,17	138:9	sees 45:21	163:12 164:2
61:11 104:1 123:19	scope 63:16 107:4	select 89:18 118:10	166:17 191:4,16,18
230:2 253:15	158:21,25 161:18	selected 35:21,22	192:3 194:4 195:21
san 1:3 3:17 6:17	240:1,15,18 241:4	159:20 174:4	196:16 200:21
sarguello 4:18	241:13,17 242:12	selecting 34:16	225:11 231:21
saturday 179:11	243:13,19	112:6	232:5,8 251:21,25
saw 36:11 60:4 93:6	score 98:5 119:18	selection 105:8	sells 132:21,21
95:20 111:20 112:1	screen 156:10	sell 34:7 40:1 43:19	215:22
212:5 214:6 226:11	sea 124:21	47:14 50:12 52:14	semi 35:11 78:6
227:21 255:25	seasons 216:17	52:15 54:13 57:17	send 168:13 178:11
saying 41:5,8 42:15	seats 113:21	58:17 71:22,24,25	223:14 224:14
89:6 90:19 98:6	second 35:14 73:15	72:6 82:11 83:2,3,4	senior 15:8 129:4,15
112:16 125:18,21	105:16 107:18	83:8,11,16,23,25	129:16 130:1
130:7,9 131:4 138:3	115:3 130:5,7 133:7	84:17,20,24 85:2,3	134:10 137:19
138:13,19,23 139:8	161:19 172:6,7	85:3,6,12,16 86:23	152:9 206:13
141:7 146:16	244:22,23 258:2	87:2,3 89:10,11	209:13 229:5
175:20,24 177:2	secondary 45:12	92:12,20,23 93:16	256:17
178:9 183:14	71:21	96:14,16,21 97:4	sense 11:3,7,13
184:20 215:6,17	section 214:8	112:10 116:24	22:13,22 98:10
226:10 231:5,6	see 38:6 61:11,12,13	117:4,20,21 118:7	131:5,8,22,24 132:1
246:16 247:6	75:2,19 93:2 107:14	122:17 124:11	sent 41:18 177:15
254:18	110:15,18 112:14	126:14 131:18,20	220:16,17
says 28:19 33:9	112:16 114:8	131:22 132:1 133:5	sentence 125:8
42:13 75:2,12,20,20	119:16 124:19	133:8 139:1 140:4,7	127:5 128:20
79:8 107:15 109:13	129:9 146:12	140:24 141:2,10	183:21 242:25
109:16 121:1	157:10,13 158:7,18	149:8 154:24	separate 24:19 25:6
124:20 125:9 131:1	166:16 167:7	159:21 160:1,6	53:10 97:12
134:14 155:19	172:13 175:17	162:21,23 163:18	serve 10:17
157:11 158:6	178:4 181:16,19	163:18 174:17,22	

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

[services - sort]

Page 34

services 9:20 14:5,8	shopping 155:20 167:20,22 168:1,3	similarly 246:13 247:6	sold 23:12 27:7,21 29:19 30:12 33:9
serving 10:20	168:14 175:19	simple 121:8	38:12 47:21 57:5,7
session 56:6	177:16 178:5,14,15	simplest 87:15	58:6,13 60:10,24
set 16:2,3 27:18,24 28:16 45:18 46:2 48:22 49:1 83:7,22 94:23 99:11 104:23 117:16 160:22 170:11 176:8,17 207:10 237:17,18 249:23 250:3,5 251:20 260:8,17	178:16 182:10 213:6,11,17 218:22 220:10 223:11 shops 171:16 174:9 174:24 175:11,16 214:16 215:1 216:9 220:3 222:9 224:9 short 28:25 81:18 96:2 97:17 107:9 133:16,20 151:13 167:13 168:25 169:3 211:7 227:5	simply 175:4 simultaneously 236:20,25 single 91:11 102:24 167:1 175:6 179:9	84:19,25 101:3,11 104:8,10,20 118:23 120:6 126:15 144:11 145:3 159:12,17 160:7,18 187:11 191:8,13,21 193:3 196:7,8 212:23 248:20
sets 27:20 156:12,14 setting 27:6 83:16 160:19,20 185:18 246:7 247:7,9,17	133:16,20 151:13 169:3 211:7 227:5 shortage 149:6 236:6 shorter 29:4 show 91:14 93:4 111:19 182:22 183:9 showed 42:17 showing 244:11 shown 141:24 shows 237:16 shut 32:15 sic 220:25 side 126:24 165:20 165:21 181:10 256:2 sign 99:21,25 214:7 259:9 significant 38:17 79:5 90:6 152:13 156:19 165:3 significantly 125:11 125:25 148:1 similar 16:11 79:2 86:18 130:17 132:7 153:11 188:25 193:12 195:7 244:24 245:16 248:6	singular 228:15 sir 221:6 225:1 sit 16:21 112:14 149:18 site 210:16 sites 255:15 sitting 193:13 six 22:16 35:8 188:19 231:19 251:24 255:20 size 30:23 31:9,16 33:17,18 34:11 39:21,23 57:16,21 112:24 148:23 153:5 163:22 164:16 222:21 248:6,9,17,19,23 sizes 29:18 30:2,11 30:19 248:5,15 sku 249:23,24 251:17 skus 12:5 80:23 90:17,24 sliced 215:15 small 15:5 25:7 39:13,23 172:2 235:7,17 smaller 34:8 smart 157:18 sofia 4:13 227:11 soho 15:4,4 25:7,11	solid 28:18 somebody 32:3 129:19 141:25 208:21 220:8 somewhat 224:11 243:11 sony 33:24 34:2 36:25 37:2 38:16 59:13 164:5 198:16 198:22 201:7,25 257:24 sony's 33:25 soon 156:4 219:2 sophisticated 149:21 sorry 22:16,18 25:5 41:24 42:2 43:20 49:17 66:23 69:21 77:6 78:13 113:7 117:9 124:14 135:19 141:23 142:20 147:4 160:12 165:19 167:16 170:19 176:15 183:15 187:4 192:7 212:11 217:22 235:14 236:14 240:16 241:14 242:5 244:12 245:10 256:15 sort 16:14 44:18 45:16 63:5 78:5

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

[sort - store]

Page 35

86:17 96:19,22 99:6 102:9 104:17 105:3 105:12 114:19 116:10 121:7 127:6 145:3 148:1 149:13 149:16 156:7 164:14,23 175:1 193:12 206:16 221:11 230:8 231:23,24 souder 20:14 106:6 106:13 sound 65:3 162:15 203:15 sounded 205:13 sounds 18:1 63:25 221:13 source 217:13 southeast 15:22 southern 15:3,21 16:1,15 18:24 space 31:4 33:15 90:12,18,22 193:6 203:8,22 speak 17:13 48:19 103:17 253:9 speaking 42:7 79:24 140:14 176:14 200:10 204:17 250:3 speaks 69:18 73:19 107:1 137:24 201:9 201:18 247:13 special 154:9,15 156:23 specialist 147:13 166:8 specials 155:24 specific 20:1 31:13 35:20 36:18 45:9 46:12 47:20 55:10 55:21 58:8 60:6 64:4 65:24,25 66:12 77:15 79:25 80:25 81:9 82:8,13,17	83:6,6,7 90:12 94:5 94:6 95:11 101:1 103:12 114:8 115:18,22,24,25 122:11 128:19 132:23 137:5 141:18 143:5 151:11,17 157:3 163:10 164:6 166:23 170:14 171:13 173:11 175:12 185:13 195:16 213:9 219:23 229:22 230:22 233:5,14 252:16 257:19 258:22 specifically 20:13 27:11 35:2 42:13 56:25 74:20 79:24 122:15 166:5 179:8 185:19 188:12 189:16 213:25 221:10 225:7 246:11 257:25 specifics 28:11 45:14 57:8,11 67:10 80:14 specified 98:11 specify 233:4,9 specter 102:9 speculate 76:2 80:6 200:10 speculating 222:2,3 speculation 69:18 73:19 75:11 76:1 108:22 125:19 127:10,18 134:4 138:21 182:1 199:7 199:13 200:18 201:8,18 221:3,25 226:20 246:19 250:24 speculative 138:1	spend 233:5 spent 115:7 spiff 94:2,10,10,25 95:5,21 spiffs 94:8 95:3,8,9 95:16 squarely 241:23 squeeze 124:25 squeezing 124:20 ss 260:2 sss 1:16 stable 243:2,10 staff 217:13 staffs 204:18 stamp 239:14 stamped 68:18 standalone 72:4 standard 44:8,8 82:10 117:22 129:6 145:2 167:11,14,20 232:3 237:5 238:5 251:24 standing 225:20 259:10 stands 15:4 106:18 start 33:7 47:9 89:21 98:24 110:13 111:15 179:10 255:9 started 101:9 104:2 155:9,11 189:1 starting 62:16,24 69:12 147:16 256:20 starts 110:25 111:7 240:5 state 258:6 stated 139:25 states 1:1 40:9,14,24 41:4,7,18 42:8 43:4 54:6 60:19 88:13,16 88:20 113:3 115:17 161:16 240:12 243:1 244:23 260:2	stay 111:3,5 159:4 190:25 191:1 201:22 237:19 steno 9:2,4,10 step 255:18,22 256:20 steps 237:12,15,21 stereo 174:17,18 steve 8:4 9:18 steven 1:13 2:5 9:8 9:15,25 259:16 stick 201:3 202:1 sticker 157:24 158:11 sticking 201:14 stipulated 9:4 stock 34:7 215:12 224:2,3 225:15 stocked 218:7 stone 99:12 stop 20:22 34:24 57:1 65:14 113:4 141:10 146:4 197:20 stopped 80:19 104:3 149:16 stops 86:24 store 16:5 28:2,4,6 28:15 29:10,12,13 29:17 40:1 96:12 120:8 124:4 138:16 158:20 160:22 165:6 168:11,12 170:22 171:14,20 171:21 172:12 173:1 174:13 176:24 177:1,3,7 178:15,16 180:17 180:18,22 182:6,9 190:15 205:2 209:24 211:8,8 213:11,15 214:5,18 215:20 216:9,11 217:7 218:3,4 219:12
---	--	---	---

VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

[store's - talks]

Page 36

store's 172:22	structure 211:20	supply 42:3 55:17	tactics 65:25 218:16
stores 14:15 15:22	stumbles 32:20	55:18 136:25 137:8	tag 187:20 204:11
15:23,24 17:22	subcontract 13:22	149:20	237:18
21:12,20,25 22:3	subdivision 24:1	support 64:23 71:15	tagged 143:25
23:1,4,4,7 28:13,23	subject 152:16	93:17,18,18,20	158:13 179:5
29:10,16 54:8 55:3	189:21 228:22	147:11,12	182:18 237:20
55:4,10,12,15,19,20	238:21 240:20	supported 34:7	tagging 237:17
55:22 69:6 80:12	subparts 11:23	supports 93:18	tags 178:21,23
101:12 120:9	subscribed 259:19	95:14	take 11:12 42:22
123:14 140:10	subsection 220:20	sure 20:3 24:4 26:20	56:2 73:2 83:21
147:15,18,23 148:6	subset 214:11	27:16 30:21 42:3,6	96:2,19 97:16 120:8
148:13,17 150:15	successfully 63:9,20	53:24 60:20 68:13	133:15 138:22
150:21 151:4	suddenly 150:10	70:10 74:4 75:20	144:13 157:7
153:12 167:1	suffering 189:18	78:14 82:15 83:13	168:25 169:2,3
178:12 180:19,20	suggest 199:3	83:15 84:14 106:10	178:21 196:25
180:25 182:23	201:14	112:22 125:4	224:23 241:10
187:12,19 188:10	suggested 67:13,14	129:16 135:21	taken 19:1 237:12
188:14 190:12	67:17 70:4,7,14,20	137:19 138:14	talk 11:1 13:9 80:16
193:7 207:4 209:18	71:1,23 72:21 85:1	153:2,20 167:17	84:6 86:22 87:1
209:20 218:12	85:7,9 86:12 110:17	187:7 213:12 251:1	110:15 116:13,21
222:19,19,21,22	111:13 117:23	surprised 140:12	126:20 218:16,20
237:6,17,23 238:3	139:16 140:17	surveys 168:18	240:22
245:24	141:16 143:10	susman 3:5 10:5	talked 96:14 110:13
straight 110:20	144:18,19 162:20	susmangodfrey.com	111:10 121:11
strategic 129:2	208:8,12 236:4	3:10	166:18 179:4 186:6
177:23	237:2 246:17 247:7	suspect 152:24	193:19 203:7 225:8
strategies 174:16,21	250:4,17 251:19	198:1 241:19	251:6 258:1
strategy 65:18,22	254:15,17 256:4	suspected 241:25	talking 18:4 21:16
95:14 172:19,20,21	suggestion 246:8	suspicions 241:2	22:10 23:6 24:8,21
174:9,15,20,24	suing 249:20	svanhorn 5:19	25:2 35:25 39:24
175:4 183:17,22,23	suite 3:7	switched 117:6	53:5 59:19 61:6
184:1,8,12,14,16	sunday 179:11,11	switching 117:17	72:2 76:5 77:14
185:2,7	179:13	sworn 2:11 9:25	86:15 87:6 90:2
strawn 4:14 227:13	super 222:19	259:19 260:8	91:12 95:18 110:12
street 2:8 3:6,15 5:7	supersedes 181:17	system 92:16 188:2	140:23 149:24
5:16 6:16 7:22 9:22	supervising 26:21	188:10 212:14,16	152:20 155:8
217:21,25	supervisors 20:16	237:16	156:11,13 162:3,5
strength 54:19	26:24,25 31:1	t	163:12 165:9
strict 150:17	107:24 180:24	t 2:10 8:2,2,2 260:5	176:11 190:10
strike 65:8 77:6	supplier 41:22	260:24	195:14,17 207:1
78:17 169:25 181:8	228:19	tactical 175:11,15	225:19 227:22,23
255:16	suppliers 21:9 36:17	175:21	228:17 234:4
striving 128:3	41:25 100:6 113:2	tacticals 175:12	237:22 240:24
strong 35:3 103:25	253:11		talks 135:3

VERITEXT REPORTING COMPANY

212-267-6868

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516-608-2400

[tape - time]

Page 37

tape 73:3,6,12 133:16,18,22 197:1 197:3,8 target 7:17 48:7 164:24 205:22 targeted 122:8,9 targets 122:5 taught 53:6 126:19 tavener 2:8 team 20:12,15 42:12 74:19 116:19 119:14 120:17 147:11 166:21 187:2,4,5,6,14 188:15,16,21,23 209:5,7,9,12 220:8 224:10 teams 224:15 technology 192:20 243:4 television 31:20 35:2 56:20 57:5 58:15 80:18,18 106:18 112:12 152:23 153:7,9 156:10 173:9 217:16 televisions 29:19 31:23 32:2,4,5,13 33:2 214:9,10 229:3 248:5,9,19 249:2,4 tell 20:9 29:22 63:5 69:9 84:12 108:12 120:6 175:6 200:8 206:3 215:14 230:12 232:7,15 233:20 234:8 telling 107:23 129:25 137:20 173:16 temporary 207:1 ten 177:6 tend 81:24 84:24 102:8,15 160:1 175:2 183:3	tended 59:7 166:13 tending 144:23 tends 137:9 tenure 66:9 term 43:20 49:12 51:25 52:5 53:25 62:12 64:17 73:20 74:2,3 76:8,13 81:2 83:18 94:2 96:13 107:16 155:21 159:14 167:13 173:22 192:18 194:17 211:8 221:11,12 254:7 terms 48:22 50:19 50:19,22 51:16,20 62:15,16,24,25 63:3 64:6 87:8 88:2,6,24 92:5,7 96:8 98:11 98:14,15 99:10 112:6 174:5 181:5 182:13 229:10,18 230:6,25 231:16 232:9 test 176:25 223:8 testified 62:8 224:3 244:16 245:21 248:13 251:18 252:10 253:25 254:5 255:8 testify 222:4,5 242:8 testifying 103:22 251:4 testimony 12:12 35:14 37:3 46:25 50:10 54:17 62:12 68:1 76:24 93:23 96:25 105:9 108:8 133:1 135:17 136:9 139:7,18,21,23 147:2 151:7 157:25 194:13 202:18 207:23 221:24 223:22 251:9 254:2 255:9 260:9	tfhd 210:6 thank 10:11 12:8 13:2 20:23 22:12 32:23 53:20 56:10 97:25 136:2 157:5 173:15 227:1 238:19 239:11,19 249:11,15 252:2 259:2 thanks 138:11 202:14 thanksgiving 190:4 theirs 113:12 theoretically 52:7 thereof 214:11 thing 75:14 111:7 164:1 166:13 167:13 206:16 215:15 231:24 things 22:7 45:16 49:2 51:7 52:15,22 84:10 92:25 96:13 98:5 104:14 105:12 111:20 129:6 139:11 145:5 175:2 206:2 215:19 228:9 255:19 think 10:23 12:2 61:22 70:23 71:3 74:15 84:1,5 86:19 95:25 96:4 103:20 108:13,24 110:19 110:23,24 121:10 122:2 125:17,20 128:7 136:24 138:13 139:23,25 141:6 167:16 170:19 176:8,17,20 186:9 188:6,18 199:24 203:9 208:24 236:25 243:18 248:11 249:13 254:13 thinking 110:16,21	third 6:7 129:7 163:6 164:10 thirty 163:1 thomson 7:25 8:23 107:13 129:3 130:5 130:10,14,22 131:7 131:19,20 134:7 199:2 238:16 239:10,11,16,17,23 241:11,20 244:18 244:21,23 245:3 246:7 247:2,4,7,16 258:7 thomson's 245:14 thought 32:14 126:5 143:25 159:23 201:25 threatening 75:7 three 90:25 91:15 102:6 116:25 151:14,14 163:25 164:23 179:16 199:10,18 214:12 224:15 throughs 181:8 throw 62:11 thumb 82:11 thursday 179:18 tie 98:16 179:8 tied 83:12,17 tier 32:8 tiers 32:10 tim 180:7 time 9:12 11:9 16:21 17:15 18:4 19:22,24 20:5,7 21:8,13,16 22:9 23:3,9 28:11 30:4,24 33:13,13 34:6 42:14 44:16 45:7 47:23 55:24 56:1,3,8 57:17,24 59:17,22 61:2 66:11 69:8 73:4,10 78:4 80:7,10,19 82:9 83:7,7,25 85:4,14
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[time - types]

Page 38

85:16,20,24 86:2,10 86:13 89:8 91:10,13 91:23 94:14 95:18 95:22,25 96:17 97:18,22 102:8,15 104:1,6 106:10 110:7,8 112:1,2 113:9 128:1,18 133:17,22 137:20 145:16 146:1 147:20 148:6,7 149:23,24 150:18 150:20,24 151:13 152:20 153:25 155:7 159:11 161:25 162:1,3,4,4 162:8,10 164:19,22 165:9 168:9,10,19 169:4,9 170:16,24 171:3,18 176:12 182:18 184:9,24 185:1,24 187:1 189:17 190:8 192:I 197:2,8,25 199:11 199:19 200:15 202:5,9,14 204:3,4 204:9 206:25 212:12 224:12,18 225:19 227:3,6 230:2 231:1,16 243:5 249:23 251:5 251:16 252:1,3,13 259:4 times 61:12 64:2 65:16 66:9 104:12 104:12 115:18 116:1 136:21 153:21 159:19 163:9 171:5 184:8 185:13 186:1 190:7 190:13,16 207:17 237:18 title 120:14 137:20 166:23 167:2 170:15,17 171:6	titled 177:20 tmi 172:7 today 9:18 10:11 13:7,20,21 18:4 48:19 209:15 213:5 215:8 224:21 227:25 231:4 240:16 242:11 244:11 251:5 254:19 today's 9:13 10:21 11:19 12:11 13:10 told 213:25 237:1 240:6 tolles 3:14 tom 20:21 tone 185:18 top 38:8 69:13 73:15 75:19 124:19 180:8 181:16 topic 11:23 240:20 241:24 topics 11:23 242:4 toshiba 4:10 38:16 202:14,20,22 203:4 253:5,9,12 total 172:9 touch 224:19 tough 136:19 225:17 226:2 town 75:13 track 166:8 tracked 119:5 167:6 trade 12:23 traffic 210:16 train 84:15 104:24 230:17 trained 65:24 66:2 126:12 148:2 trainer 124:3,7 training 52:16,20 66:7,9,14 93:19 124:8 157:10 204:20,24,25 205:2 213:14	tranches 89:1 transactional 97:7 115:9 transcribed 2:10 transcript 12:15 260:9 transcripts 259:11 transfer 42:15 transferred 80:12 transitioned 91:10 translate 236:17 travel 114:16 treatment 125:22 trending 196:23 trends 30:15 243:4 trial 110:18 254:7 254:10 tricks 105:17 tried 179:8 207:5 trip 253:19 trips 112:6 115:8,12 252:11,18 254:1 true 25:16 26:1 57:12 137:7 207:25 260:9 truly 161:5 trust 3:11 10:6,16 13:13,16,22 14:6 61:7 103:11 107:16 107:24 108:2 trusted 103:13 truthful 226:1 try 11:1 20:18 37:5 65:25 66:18 67:4 117:4,12,24 118:8 156:24 157:20 175:3 194:10 206:11,18 225:12 237:18 trying 65:18 91:16 116:3 118:13 128:7 131:18,19,22,25 144:1 149:13 160:6 174:12 185:8 191:7 208:9 215:3,10,16	215:25 246:25 248:17 tube 1:7 60:5 157:2 157:3,4 199:5,18 200:16 201:2,14,15 201:16,25 tuesday 179:15 turn 157:1 172:5 178:2 180:6 183:18 222:13 239:24 242:22 tv 20:12,14 74:19 75:15 182:25 192:19 203:14 210:7 tv's 163:23 173:9 174:17,18 249:18 twenty 3:16 two 15:14 19:2 25:1 73:12 78:2 84:15 102:6 115:2 117:1 123:4,5 178:2 179:16 183:19 189:3 199:3,11 203:19 224:14 236:19 237:6 258:7 tx 3:8 type 15:15 31:19 45:13 53:12 61:10 66:8 86:18 93:9 96:13 99:12 112:23 119:4 129:6,13 132:23 144:21 150:23 153:22 156:3,14 163:12 167:13 177:8 191:7 192:19 198:12 205:1 211:8 216:8 220:10 223:11 225:19 228:2,15 229:25 types 18:6 31:23 93:10 156:13 163:14 204:8 211:15 228:13
--	---	---	--

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212-267-6868

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516-608-2400

[types - vendors]

Page 39

237:21	138:17,18 140:11	usual 149:10,14 usually 25:9 33:13 81:8 91:9 103:2 163:25 207:14	43:12,24 44:10,22 52:21 53:1 54:2 55:2 60:14 62:9,11 62:17,25 63:4 64:13 65:7,12 66:13,16 67:1,23 71:1 76:16 78:25 81:6 82:5 83:10,22 86:9 87:18 89:22 91:13,16,23 92:3 93:12 98:1,3 99:4,7,15,21,25 100:2 101:21 102:21 104:14,16 105:7 108:6 113:16 115:3,16 122:8,17 129:5 132:12 135:22 136:13 141:12 144:9,15 161:6 195:25 205:16 228:3 229:8 229:9 231:22 232:7 233:4 250:5,14,16 250:22 256:18 257:11,14,20,21 vendor's 34:5 37:16 42:10 122:13 vendors 26:18,22 33:20 35:20 36:1,3 36:14 37:6,8 38:11 42:1,7 43:3 44:14 50:21 51:3,9 54:15 63:21 66:20 67:5,10 68:6,10 70:16 71:16 72:12,13,16 78:10 78:21 79:3 82:14,18 88:7,8 89:20 90:9 90:13 93:22 95:6,17 98:2,7,11 101:3 103:7,13,23 108:20 109:6,8 110:1,5 111:4 115:6,7,24 117:6,12 120:19 122:6,12 124:24 126:5 132:6,7 134:18 136:17
u			
u.s. 40:16,23 41:9,12 41:19 42:2,18,23 43:12 111:24 113:13 114:2,10 115:19 116:18,19 255:5 256:10	unit 248:1 united 1:1 40:9,14 40:24 41:3,6,18 42:8 43:4 54:6 60:19 88:13,16,20 113:3 115:17 260:2	uniforms 217:24 unit 248:1 united 1:1 40:9,14 40:24 41:3,6,18 42:8 43:4 54:6 60:19 88:13,16,20 113:3 115:17 260:2	193:25 194:22 195:12 196:6 204:19 205:9 211:6 218:14 228:11 229:12 232:24 233:23 235:4 236:12 247:20 248:10,21 253:6
ultimate 26:17 27:13 203:15	units 163:23 universe 222:14,15 222:17,18 223:3	unwritten 68:8 upcoming 215:20 216:25 update 137:17	valuable 81:18 value 46:12 57:20 57:20 247:4 van 5:14 variations 207:13 varied 164:25
ultimately 211:24	138:11 255:25 usa 69:3,9	138:11 255:25 use 12:23 13:7 42:11 43:20 48:1 65:25 66:17 67:3,15,20 91:1 101:9 144:21 145:7 159:17 163:20 164:8 168:17 192:18 194:17 195:8 205:6 251:11 257:10,15	various 66:9 104:3,4 147:12 156:13 163:8 171:5 184:8 229:7 248:4 vary 152:19 207:8 207:12 228:18 ver 15:11 58:15 vers 15:13 16:13 vendor 16:22 31:9 35:19 36:4,8,19 37:13 40:5 42:9,15
unbranded 45:11 46:21 47:17			
unclear 245:12			
uncommon 200:7			
underlined 181:24			
underlines 181:8			
understand 10:20 11:19,22 14:22 17:23 19:9 21:10 26:20 44:9 56:12 60:25 75:23 78:16 106:12 107:20 109:12,22 116:3 125:14 129:21 130:6 131:2 134:2			

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[vendors - why's]

Page 40

139:4,15,16 140:16 191:3 195:7 199:10 200:8 205:8 227:18 228:5,10 229:18 230:7,20 232:12 250:3,12 251:1 252:12,17 254:1,6 255:14 257:11,17 verbal 11:5 verbalized 124:12 135:24 verify 223:5 225:5 225:10,13,14 226:8 veritext 9:19 versa 148:18 version 12:23 124:16 181:23 184:5 221:14 versus 32:4 33:2 55:9 86:4 88:20 98:15 126:18 164:15 196:9 207:10 viable 72:3,6 110:19 110:23 162:15 vice 24:15 119:21 148:18 video 1:13 2:4 9:2,4 9:10 15:8 16:12 24:9,10,22 112:15 129:8 193:14 209:4 209:12 video1 9:15 videographer 2:11 9:11 10:1 56:3,8 73:4,10 97:18,22 133:17,21 169:4,9 197:2,7 202:5,9 227:3,6 259:3 view 127:13 203:21 221:21 viewed 203:8 viewpoint 45:25 60:14 129:1 194:4 212:4 231:20	virginia 1:14 2:9,12 16:18 188:22 257:7 visibility 54:4 153:18 187:14 211:12 visible 152:25 167:7 167:10 visit 110:10 111:3 111:18 116:15,20 129:5 166:19 220:12,13 252:12 252:20,25 253:5,12 253:14,22 255:13 256:7 visited 21:8 60:2 114:25 203:1 252:17 253:20 visiting 113:11 visits 214:5 219:12 253:9 254:1 volume 65:6,11 89:2 89:5 92:12,21 191:20 227:23 228:3 229:10	124:16,18 126:15 130:2,4 135:5 138:25 141:9 146:18 147:15 168:25 176:23 181:11 182:25 185:20 195:24 200:11 210:12 213:19 215:13 223:10 224:1,19,25 226:23 237:18 240:14,25 255:12 257:23 wanted 33:5 64:14 114:8 129:15,20 137:4 184:25 185:19 194:25 216:13 223:25 232:23 238:1,2 249:13 wanting 204:11 215:2 wants 44:10 113:16 warehouse 203:21 218:9 warrant 244:8 washington 7:6,14 waste 168:9 watered 124:16 way 20:2 21:14,23 30:16 31:7 34:23 38:4 40:4 52:17 54:24 60:8 62:3 63:6,24 66:12 90:19 91:2 92:14 98:17 105:15 109:19,21 112:20,22 113:21 114:23 115:8 120:8 121:8 126:2 139:25 143:16 150:1 151:16 157:2 158:2 159:3 172:10 174:18 188:12 190:3 194:10 195:14 203:20	205:5 206:15,25 212:1 213:20 216:6 219:14 224:18 226:24 228:6 230:8 230:17,18 231:8,11 236:22 247:5 248:19 256:4 260:14 ways 211:16 213:6 225:12 226:7 wave 4:9 we've 45:14 web 39:25 148:18 148:20 210:7,7 216:20 website 148:13 wednesday 1:15 2:6 210:7 week 29:2 111:3,5 115:4 119:19 179:3 179:18 189:22 190:1,2 207:2 215:8 224:15 weekly 168:6 172:22 172:22 177:21 190:5,9 weeks 151:14,15 214:12 welcome 202:16 wells 7:21 went 61:11 80:5 92:21 93:8 112:25 113:3 115:13 143:2 166:24 187:21 201:21 213:15 243:3 250:9,22 251:1 253:10 west 5:7 whereof 260:17 white 4:5 129:5,13 178:20 198:11 whitecase.com 4:9 whitehead 5:5 why's 146:3 189:11
---	---	--	---

VERITEXT REPORTING COMPANY

212-267-6868

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[widely - zenith]

Page 41

widely 100:14	146:11 147:3	180:19,22,24
104:20	149:13 151:8	working 69:9 164:4
width 240:23	152:19 158:1,23	187:1
william 4:4 202:13	159:3 160:16 161:1	workload 224:17
willing 52:4	161:9,20 162:14	worth 90:5 131:13
win 46:8 185:19	163:4 167:22	write 219:2
windows 28:25	168:22 176:15	writes 127:6
wine 121:9	182:3 184:7 188:5	wrlting 204:14
winston 4:14 227:12	191:13,24 192:6,13	220:21
winston.com 4:18	193:1 194:1,14,23	written 68:4 129:7
wise 53:5	195:13 196:7	129:10,11
wlsh 71:5	197:22 199:8,15	wrong 145:6 158:18
withdraw 64:22	200:7,19 201:10,19	158:23
witness 2:5,10 8:3	202:16 204:20	x
8:15 10:6,7,17,21	205:10,12,15 211:7	x 1:6,11 89:7 90:22
12:25 13:20 21:2	211:23 217:9 218:6	99:10 230:9
22:14,23 27:16	218:15 219:21	xyz 103:1
32:22 35:15 40:18	222:1,6 223:23	y
42:25 44:16 46:20	225:2 226:21	year 9:14 21:14
47:1 49:1 50:3,11	227:10 228:12	33:13 34:23 35:4,6
51:16 53:4,21 54:23	229:13 231:13	61:12 81:1 90:3,3,4
58:3,21 60:13 61:9	232:25 233:24	90:24,25 119:19
62:20 63:23 64:17	234:6,18,24 235:10	151:14 163:24
65:2,21 66:6 67:7	235:16 236:13,22	224:13 231:18
68:2,12,16 69:20	238:25 239:6,8,11	251:20
70:1,19 72:18 73:20	240:14,16 242:8,20	years 14:12 15:14
75:12 76:2,25 77:12	243:20 244:3 245:8	17:12 31:13 48:4
77:25 79:23 81:14	245:21 246:11,20	78:2 86:6 104:3
82:25 84:23 87:21	247:14,21 248:11	163:25
90:16 93:24 97:1,9	248:22 249:6	yesterday 12:13
98:13 102:12,23	250:25 252:22	york 4:7,16 6:8
103:16 105:10	253:8,19 258:25	z
106:16 107:5,18,23	259:9 260:7,10,17	zenith 69:3 199:2
108:9,24 109:16	word 42:1 73:22	258:7
110:10 113:6,9	81:22 167:18	
119:7 120:24	work 14:12 28:9	
124:14 125:4,20	31:11 44:11 45:4	
126:10 127:2,12,19	92:17 94:11 116:16	
128:7 130:9 131:1	143:16 145:1	
131:10 132:10	147:10 152:8	
133:2 134:6,23	227:12 235:13,18	
135:18 136:1,12	256:19	
138:3,22 139:8,25	worked 16:18 24:23	
140:20 142:19	30:3 74:19,23 124:4	
143:22 145:20	154:16 171:14	

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Page 259

1 MR. LAHAD: Nothing further for you. 17:57:22

2 Thank you. 17:57:23

3 THE VIDEOGRAPHER: Are we done? There
4 being no further matters, the time is
5 approximately 5:57 p.m. This deposition is
6 concluded.

7

8 (Whereupon, the deposition concluded at
9 5:57 and the witness is to read and sign with
10 arrangements already on record with standing
11 orders for transcripts.)

12

13

14

15

16



STEVEN DEASON (correct spelling is Stephen)

17

18

19 Subscribed and sworn to before me
20 this 21 day of May , 2014.

21

22



23 NOTARY PUBLIC



24

25

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NAME OF CASE: IN RE: CRT Antitrust Litigation
DATE OF DEPOSITION: April 23, 2014
NAME OF DEponent: Steven Deason

PAGE	LINE (S)	CHANGE	REASON
2	5	replace "Steven" with "Stephen"	legal name, spelling
15	23	replace "four" with "for"	spelling, meaning
19	2	replace "net" with "new"	misheard
20	18	replace "Shoclapper" with "Shuklapper"	spelling
24	22	replace "displayed" with "display"	misheard
29	22	replace "tell" with "sell"	typo?
31	5	replace "it" with "each"	clarity
43	13	replace "no" with "other parties"	Answer was not complete,
43	13 cont.	were sometimes part of the	Corrected in testimony on
43	13 cont.	negotiations"	pages 110-117 & 254-257
55	18	replace "are going" with "are not going"	misheard
67	8	replace "funds" with "forms"	misheard
70	21	replace "fact" with "factor"	misheard
71	14	replace "and" with "on"	misheard
75	13	replace "town" with "Taiwan"	misheard

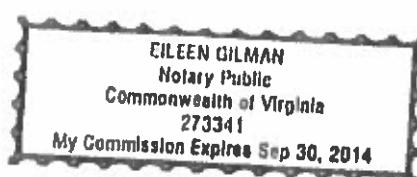
Continued on next page

Stephen Deason
STEPHEN DEASON
(correct spelling is Stephen)

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 21 DAY OF April, 2014

Eileen Gilman
(NOTARY PUBLIC)

7.30.2014
MY COMMISSION EXPIRES:



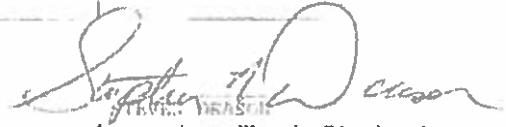
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NAME OF CASE: IN RE: CRT Antitrust Litigation
DATE OF DEPOSITION: April 23, 2014

NAME OF DEFENDANT: Steven Deason

PAGE	LINE (S)	CHANGE	REASON
		<u>Part Two Continued from prior page</u>	
89	1	replace "tranches" with "trucks"	misheard
89	25	replace "business. Is it, are" with ("business is it. Are"	clarity
109	17	replace "a" with "our"	clarity
109	18	replace "are" with "our"	misheard
120	17	replace "elite" with "lead"	misheard
121	9	replace "wine" with "whine"	spelling
127	9	replace "health" with "hell"	misheard
133	7	replace "his" with "it's"	clarity
149	14	replace "then" with "than"	misheard
150	10	replace "profit" with "profitable"	clarity
151	17	replace "were" with "we're"	typo?
163	7	replace "MPD" with "NPD"	misheard
163	18	replace "MDP would sell out" to "NPD was sell through"	clarity
187	16	replace "what" with "about"	clarity / misheard?

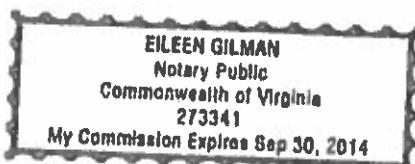
Continued on next page


(correct spelling is Stephen)

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DATE OF DEPOSITION: April 23, 2014
NAME OF DEponent: Steven Deacon

PAGE	LINE (S)	CHANGE	REASON
<u>Part Three</u>	<u>- Continued from prior pages</u>		
203	14	replace "Kahn's" with "Conns"	spelling
212	19	replace "we cap" with "we're clear"	clarity
228	12	replace "So I am" with "No, I am not"	misheard / clarity
250	12	replace "said" with "set"	misheard

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 27 DAY OF May, 2014 (correct spelling is Stephen)

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 2^d DAY OF May , 20¹⁴

Eileen Gilman
(NOTARY PUBLIC)

9. 30. 2014
MY COMMISSION EXPIRES:

